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CURRENT TOPICS

Penal Reform: Information

THE Home Secretary is to be congratulated on the White Paper entitled Penal Practice in a Changing Society (Cmnd. 645, H.M.S.O., 2s. 6d.), which he presented to Parliament on Monday. The conciseness with which the statistics and problems of crime are presented, together with the description of research work and proposed reforms, is as noteworthy as the breadth of outlook revealed is refreshing. The objects of the White Paper can be described in two words—*information* and *respect*. For the courts to deal effectively with individual offenders they require to be supplied with much greater information about them before sentences are passed. With this in mind a committee under the chairmanship of Mr. Justice STREATFEILD has been appointed to review the present arrangements (*a*) for bringing to trial persons charged with criminal offences; and (*b*) for providing the courts with the information necessary to enable them to select the most appropriate treatment for offenders, and to consider whether any changes are required in those arrangements or in arrangements for the dispatch of business by the courts. Mention is made of the "induction units" experimentally established to allow the newly received prisoner to be kept apart for two or three weeks from the main prison while knowledge of him is gained and his classification considered. Further, a standing committee on criminal law revision is being set up under the chairmanship of Lord Justice SELLERS. The first subject to be referred to it for consideration is the law of larceny and kindred forms of fraud; the committee is also being asked how to remedy the position recently disclosed that a man who invites a child to handle him indecently does not commit indecent assault. Besides setting out in an appendix the country-wide crime research projects under way, the Report makes reference to the willingness of Cambridge University to establish an institute of criminology if funds can be made available. When Mr. BUTLER made his statement in the House about the White Paper, he also announced that a comprehensive inquiry on the probation service is to be held and will cover its functions, administration, recruitment, training, pay and conditions of work. This inquiry follows shortly after the publication of the Report of the Committee on Remuneration and Conditions of Service of Certain Grades in the Prison Service (Cmnd. 544, H.M.S.O., 2s. 6d.).

Penal Reform: Respect

THE other outstanding feature of the White Paper is its stress on the need for respect, respect of and for the human being whether he be the victim of crime, the prison officer or the criminal. An official working party is being set up

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to examine the proposal that the State should compensate the victims of crimes of violence and to see whether, if the principle of compensation were accepted, a workable scheme could be devised. The practical possibility of criminals paying compensation to their victims will doubtless be considered also. Much reference is made in the Report to the desirability of improving prisoners morally and to establishing " in them the will to lead a good and useful life on discharge." If more than lip-service is to be paid to this ideal, staff of high calibre are required and conditions of work must be such as to attract the right type of applicant. More important still, the deplorable conditions, under which at present some 6,000 men are sleeping three to a cell in local prisons, must be removed. The White Paper shows great awareness of these conditions and comments that " nothing is more demoralising than idleness in an overcrowded prison." Accordingly details are given of a substantial building programme to be carried out. Considerable thought has been given to the problems of discharge and after-care and an account is given of hostels being established to house prisoners who, during the last six months or so of their sentences, will live as far as possible ordinary working lives, paying for their board and lodging, maintaining their families and saving towards their release. Hope is expressed in the White Paper that its publication will stimulate informed discussion of the intractable problems that have to be solved. As a contribution towards such thought we are pleased to publish, at p. 106, *post*, an article by Mr. C. A. JOYCE who has very many years' experience of criminals and particularly of boys and young men in the age-group causing the maximum concern at present, namely, that covering those between the ages of sixteen to twenty-one. However desirable are the elaborate plans proposed for dealing with crime, we must not lose sight of the fact that wise upbringing further down the age scale might reduce the need for more prisons, research and compensation required in later years. We neither want to create vested interests in crime nor regard its present scale as a norm. At least part of a long-term solution must lie with the educational system of the country which has to train the adults of the future to be responsible parents. In the light of Mr. Joyce's article, no harm will be done if the courts let it be known that they will give complete support to school teachers and others who take appropriate and calculated steps to maintain discipline amongst the young.

The Matrimonial Proceedings (Magistrates' Courts) Bill

LAST week the Committee appointed in July, 1958, to consider a draft Bill designed to replace the existing legislation relating to matrimonial proceedings in magistrates' courts issued its report (Cmnd. 638, H.M.S.O., 2s. 6d.). The report itself is quite short but the document includes a draft Bill giving effect to the recommendations made and explanatory notes thereon. The Bill, if passed, will consolidate with substantial amendments the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, but no indication has yet been given by the Government when it will be introduced. The Committee do not propose to give to wives any important additional grounds for obtaining maintenance or separation orders in magistrates' courts, but the newspapers gave publicity to their proposal that husbands should be able to obtain orders against, and maintenance from, their wives in those courts on much the same grounds (with one exception) as wives can now obtain them against their husbands. It is doubtful whether this change, if made, will in practice result in many wives being ordered to maintain their husbands, especially as maintenance will not, under the terms of the Bill, be payable to husbands unless they are unable to earn because of age or ill-health. Another suggestion of the Committee is that, in proceedings by either husband or wife for an order, the magistrates should have power to commit the children of the marriage to the care of the local authority; this may seem a drastic course, but a number of practitioners have probably come across marriages where the welfare of the unfortunate children would be best served by removal from both parents. The High Court already have this power under the Matrimonial Proceedings (Children) Act, 1958, s. 5. Another proposal, corresponding to s. 6 of the 1958 Act, is that magistrates should have power to direct that a child should be under the supervision of a probation officer or local authority even though its custody has been awarded to one of the parties or a third person. Another proposed change is that mere residence of the parties in the same house, without cohabitation, should not suspend the order; the present law, as exemplified in *Evans* v. *Evans* [1948] 1 K.B. 175, works all the more unsatisfactorily in times of housing shortages. A useful suggestion incorporated in the Bill is that magistrates' courts should be able to revoke or vary maintenance orders in favour of a person abroad; this cannot at present be done because a summons cannot validly be served outside Great Britain and Northern Ireland. We hope to discuss the Committee's proposals more fully in due course.

Legal Revival

FEW legal orders can be more tenacious of life than those made by magistrates for the maintenance of wives and children. They can survive divorce and re-marriage and in proper circumstances can be brought to life again after they have been solemnly discharged by a competent court, s. 53 of the Magistrates' Courts Act, 1952, providing that " where a magistrates' court has made an order for the periodical payment of money, the court may, by order on complaint, revoke, revive or vary the order." An example of how an order can be " revived " occurred recently. A husband asked for a maintenance order to be revoked on the ground that he and his former wife had been divorced since the magistrates' order had been made and that they had both re-married. The hearing took place in a London court and the wife did not appear as she was living in the Midlands and could not afford to attend. When, however, she was informed of the revocation she wrote to ask the reason for the court's decision. Upon being told she replied that in fact she had not married again and, now that her former husband was no longer required to pay her any maintenance, her only income was £2 5s. as a part time cleaner. The magistrate granted her a summons to revive the order. At the hearing the husband said that he was now approaching sixty and his present wage of £7 per week had to support himself, the new wife and their two children. His wife was unable to work because of illness. He admitted that at the earlier hearing he had said his former wife had married again and, from information he had received, he had genuinely believed this was true. Holding that the former wife, meagre though her income appeared to be, was no worse off than the four who had to manage on £7 a week, the magistrate decided not to revive the revoked order. As a solatium for what had proved an unrewarding journey, the wife's expenses were paid out of the court's poor box fund.

THE MENTAL HEALTH BILL—I

FOR a Bill embodying all the major recommendations of a Royal Commission to be presented to Parliament less than two years after the publication of the Commission's report is in itself a matter for admiration; when the Bill presages such humane and rational reforms as the Mental Health Bill it deserves the compliment of careful scrutiny from all who are in any way concerned with those whose lives will be so greatly affected by the proposed legislation. With one person in every twenty of the population passing through the doors of a mental hospital at least once in a lifetime, we are most of us in some way brought up against the problem of mental health; lawyers have always been particularly involved in the problem and if this Bill becomes law they will be even more closely concerned. When the Royal Commission's report was examined in this journal (101 SOL. J. 509) it was said that if its proposals were put into practice "England would have a mental health service which would be the envy of the world." This Bill does not, and cannot, do more than provide a framework for such a service, which would require years of thoughtful development and massive expenditure of public money before it could be achieved, but preliminary legislation of this type is an essential foundation. If it becomes law, for once Parliament will have shown itself to be abreast of scientific opinion and ahead of public prejudice and ignorance; the unusually warm welcome which the Bill received on its second reading suggests that it will receive the Royal Assent with the minimum of amendment or delay.

New names and new attitudes

The whole approach of the Bill is summed up in the definitions and classification of mental disorder in s. 4. The old words "lunatic," "idiot" and "imbecile" are to go, and "mental disorder" will cover every type of mental illness, whether due to arrested development or supervening disease. Three classes of mental disorder are recognised: "severe subnormality," meaning a state of arrested development of mind which makes the patient incapable of living an independent life; "subnormality," meaning a state of arrested development of mind (not amounting to severe abnormality) which requires or is susceptible to treatment or special care; and "psychopathic disorder," meaning a disorder of personality which results in abnormally aggressive or seriously irresponsible conduct *and* requires or is susceptible to medical treatment. It is this third class of the mentally ill who are the subject of the most revolutionary provisions of the Bill and the ones which will probably have the greatest difficulty in becoming law: these provisions, which could lead to a completely new attitude to the criminal, especially the pervert and the recidivist, will be dealt with in a subsequent article.

Abolition of the Board of Control

The functions of the Board of Control, already greatly reduced by the legislation of 1947–48, will come to an end and its place will be taken to a large extent by new bodies, the Mental Health Review Tribunals. One of these tribunals is to be set up in every regional hospital board area (cl. 3); each will consist (Sched. I) of a number of members with legal, medical and social administrative experience, appointed by the Lord Chancellor, and in each case one of the legal members will be nominated chairman by the Lord Chancellor. Three members of a tribunal form a quorum, of which one member must be medical and the other legal, and they must be presided over by a legal member, either the chairman of the tribunal or appointed by him. The main functions of these tribunals will be concerned with the hearing of applications for the discharge, release and re-classification of patients, as described below. Appeal from the tribunals on a question of law is to the High Court by way of case stated.

Compulsory detention of patients

The Royal Commission laid down the principle that there should be "care without compulsion" and that everything should be done to allow and encourage patients to seek treatment for mental illness, with no more restriction on their freedom than if they were physically ill. The operation of this principle does not depend primarily on legislation, but on the provision of an adequate number of hospital beds and the education of the public to a better understanding of the nature of mental illness. The Bill does nothing to discourage the voluntary patient and makes provision for the admission of mental patients to ordinary hospitals and nursing-homes (cl. 5), thus ending the segregation of mental from physical illness. Furthermore, the arrangements for detention in cases where compulsion is necessary are entirely new. In the place of the seventeen procedures for admission and detention available under the old law, there are to be three methods of imposing compulsory detention: an application for admission to hospital for observation or treatment (cll. 25 to 32); an application for guardianship (cll. 33 and 34); and admission of patients concerned in criminal proceedings, by a court order (Pt. V, cll. 59 to 78). The first two of these procedures will be considered here and the third will be dealt with subsequently.

Application for admission to hospital

An application may be made for admission, either for observation or for treatment, by the nearest relative of the patient, or by a mental welfare officer (after consulting and obtaining the consent of the nearest relative) on the ground that the patient is suffering from mental disease or severe subnormality *and* that it is necessary that he should be detained in his own interests or for the protection of other persons (cll. 25 and 26). The application must be supported by the written recommendations in the prescribed form of two medical practitioners, one of whom must be previously acquainted with the patient and one approved by the local authority as having special experience in the diagnosis and treatment of mental disorders. Clause 28 imposes strict limitations on the medical practitioners able to make such recommendations. The patient admitted for observation may not be detained for more than twenty-eight days, and one admitted for treatment may apply to a Mental Health Review Tribunal within six months of his admission (cl. 31).

An emergency application can be made in urgent cases either by a mental welfare officer or by any relative of the patient, accompanied by *one* medical recommendation. A patient may not be detained more than seventy-two hours after an emergency admission unless a second medical recommendation is made within that time, and both the recommendations fulfil all the requirements of cl. 28.

Application for guardianship

The Royal Commission advocated the appointment of local authorities, as well as private individuals, to act as "guardian" to the mentally unfit who need community

care when this is impossible without some form of compulsion. This function of local authorities, analogous to their duty to act as "fit persons" under the Children and Young Persons Acts, is created by cl. 33. An application for guardianship may be made in the same way as an application for admission to hospital, including medical recommendations (cll. 25 to 28), and either the local health authority or any other person, including the applicant, may be named as guardian, but if anyone other than the local authority is named the local authority must accept that person as guardian before the application can become effective. Whoever thus becomes the guardian has all the powers over the patient which he would have if the patient were under fourteen years of age and he, the guardian, were the patient's father (cl. 34).

The doctor's rôle

Under the new law no one can be detained in hospital or placed under guardianship for more than seventy-two hours without written recommendations from two doctors, one of whom must be recognised as having psychiatric experience; a very different matter from the present method of certification. This will very properly lay much more emphasis than before on the diagnosis of mental disorder, especially as the recommendations must set out the *grounds* for the doctors' opinion that the patient should be detained, and a statement of the *reasons* for that opinion; and if the patient is said to be suffering from any particular disorder of the mind, both recommendations must specify the same disorder. Also, as we have seen, it is the responsible medical officer who, in the first instance, controls discharge of the patient. There has been some criticism of the Bill on the ground that too much power is to be put into the doctors' hands and it has been suggested that now the central scrutiny of all documents by the Board of Control has been abolished there should be some machinery for the examination of all "recommendations" by the Mental Health Review Tribunals.

Stigma removed

It will be seen that these procedures are simple, rational and devoid of all suggestion that the patient is being "put away." The application is an *authority* for the hospital or guardian to care for the patient: it is not an *order* for his admission. The hospital is no more obliged to admit a patient who is the subject of such an application than one who asks voluntarily for admission. There is no classification of patients as "certified," "voluntary" or "temporary" and presumably a patient detained under the new procedure would not be distinguished by his treatment in hospital from patients admitted in other ways. This change should go far to remove the stigma attached to compulsory mental treatment.

"Nearest relative"

A new legal *persona* is created by the Bill—the "nearest relative" on whose application compulsory detention will usually be founded. Defined by cl. 49, the nearest relative is given considerable powers, both positive and negative, since he can bring about the patient's detention or obstruct it by refusal of consent under cl. 27. The necessity for medical recommendations limits abuse of the former power, and his obstructive capacity is restricted by cl. 52, which gives the county court power, on the application of any relative of the patient or of a mental welfare officer, to transfer the functions of the nearest relative to the applicant, to the local health authority or to any other person. In effect, this gives the county court judge a very wide discretionary power: the lawyer is to have ultimate control of admission, and we shall see that he will also control the discharge of patients in the office of president of the Mental Health Review Tribunal.

Discharge after compulsory detention

No one may be detained in hospital or kept under guardianship for more than one year unless the authority for his detention or guardianship is renewed under the provisions of cl. 43. Only if a report is given by the responsible medical officer that the patient should continue to be detained or kept under guardianship in his own interests, or for the protection of other persons, shall the period of detention or guardianship be renewed. Authority for detention or guardianship may first be renewed for a period of one year; thereafter for a period of two years; thereafter for a period of three years, and so on for periods of three years at a time.

Whether a patient is detained in hospital following an application for admission for treatment or is subject to guardianship, he will be automatically discharged if an order is made in writing by his nearest relative, or by the managers or the responsible medical officer of the hospital where he is detained, or by the responsible local authority if he is subject to guardianship (cl. 47). This freedom of discharge is limited by cl. 48: the responsible medical officer can report that the patient's discharge might be dangerous to other persons or himself and the relative may not then make any further order for discharge for a period of six months. The relative can apply to a Mental Health Review Tribunal within twenty-eight days and the tribunal can, if satisfied that the patient's condition is suitable (cl. 121), order his discharge.

The total effect of these provisions is that it is extremely simple for a patient to be discharged from hospital or guardianship and that the discharge can only be "blocked" by a report from the responsible medical officer, with a right of appeal to a Mental Health Review Tribunal.

[*To be continued*] MARGARET PUXON.

"THE SOLICITORS' JOURNAL," 5th FEBRUARY, 1859

ON the 5th February, 1859, THE SOLICITORS' JOURNAL reported the Burns Centenary, which, "as it stood in need of oratory, relied chiefly upon the legal profession, for the clergy, with few exceptions, stood aloof. Lawyers have not much to thank Burns for, as he always assailed them, but they rather relish witty opposition and are the least revengeful of men . . . The chief Edinburgh banquet was presided over by one of the judges of the Court of Session, Lord Ardmillan, an Ayrshire proprietor, who seemed to have half of Burns by heart, and he was supported by the Lord Justice-Clerk Inglis, who does not incline to poetry, by Lord Neaves who has himself written some very clever political songs, and by Lord Ivory, whose first literary performance when a lad was a criticism of a forgotten poem of Robert Mudie . . . a man of splendid talents, now nearly forgotten, whose fate and history in life were too like those of Burns. Lord Ardmillan made capital speeches . . . full of eloquence and enthusiasm, not at all lawyer-like. He is about the last of the Scottish forensic orators who can stir the emotions and who do not appeal to reason alone . . . Lord Neaves had for a toast 'the Biographers of Burns' and would have made the best speech of all (he is probably the most accomplished of our lawyers, and has a delicate, grave wit) but he was too fine for his audience, especially taking into consideration the period of the evening and the effects of toddy and sherry, and they did not attend; in fact some of the more boorish seemed disposed to 'ruff' him down, so that his speech was in a measure lost but for the newspapers."

THE LEGAL ADVICE REGULATIONS—II

Legal advice application form

At the end of our article last week we said we hoped that the application form for legal advice under the statutory scheme would be simple. Since then we have had the advantage of seeing the form. We make no incautious prophecies in view of our own long experience of misunderstanding what others have told us were simple forms and of seeing others misunderstand forms which we thought were simple, but this particular form seems to offer little scope for perversity. The front page puts in simple language the financial qualifications which we described in our previous article and also contains the inevitable warning that those who fail to comply with the regulations or make false statements incur penalties. Page 2 consists of spaces for applicants to set out the amount of their capital, income and deductions and then points out which figure should be deducted from which in order to arrive at their net income. The opposite page contains explanatory notes. There is a space in which applicants will have to state briefly what they want to be advised about and that they have neither consulted any other solicitor previously nor have had an order made against them making them ineligible for legal advice, about which we will say more later. The fourth page consists merely of a certificate to be sent to the area secretary (with a counterfoil to be detached and kept by the solicitor) claiming payment.

Receiving the client

The sequence of events will presumably be something like this. A client arrives and says he wants legal advice. He may or may not mumble something about a scheme. If he volunteers the information that he wants advice under some sort of scheme he should be presented with the form for the statutory scheme and also with the printed conditions, which have just been published, for the voluntary scheme. Our guess is that nine out of ten clients will then ask what it all means and we think that we shall have to train our receptionists to say: "If you have more than £75 savings, the charge will be £1; if you have less than £75 and you are on national assistance the charge will be nothing; if after filling up page 2 of this form (flourishing the statutory form) you find you have £4 10s. a week or less after allowing for your dependants, the charge will be 2s. 6d." If a client asks to see a solicitor and says nothing about a scheme we do not consider that it is any part of the receptionist's function to advertise it. We are entitled to assume until the contrary appears that a client does not wish to take advantage of either the voluntary or the statutory scheme unless he says so. Indeed, some clients might feel insulted by the suggestion. We foresee, however, that once a client has been admitted to the presence he may start talking about schemes, so that it will be wise to keep supplies of forms in our desks as well as in the outer office.

The consultation

Once the eligibility of a client for advice within the statutory scheme has been established and the form, if any, completed and signed the next step is to collect 2s. 6d., unless the applicant produces a national assistance book. The parking meter, if we may use the expression, then begins to move and immediately clocks up £1; it does not alter until forty minutes have expired when it goes up to £2; the next stage is £3 to cover a total interview of one hour and thirty minutes, after which no further advice can be given (in expectation of payment) without the authority of the area committee.

At this point we should mention that the advice need not be given at one interview provided that the total ration of one hour thirty minutes for each client is not exceeded. Judging by past experience, most applicants will arrive either without any papers at all or with only some of those needed and they will have to come back later with the rest.

If an applicant says that he has already had advice and wants a second opinion he must be told to write to and obtain the authority of the area committee.

It does not matter if there are other sources of advice which an applicant could use, such as a trade union.

A solicitor is to be entitled under the statutory scheme to refuse to give advice or to continue to give advice for reasonable cause without giving the applicant the reason, but he will have to give the reason to the area committee if so requested.

When the interview or series of interviews is finished, all that the solicitor will have to do is to complete page 4 of the form and after detaching the counterfoil to send it to the area committee. Where a client is on national assistance and no fee has been paid, the solicitor will receive the fee of £1, £2 or £3, as the case may be, in full from The Law Society. In other cases, where the client has paid 2s. 6d., the solicitor keeps it and receives only 17s. 6d., £1 17s. 6d. or £2 17s. 6d. from The Law Society.

The regulations contain detailed provisions for dealing with the persistent and vexatious applicant. Presumably, the names of those proscribed will be circulated and we hope that the list will not be too long.

The voluntary scheme

Those are the essentials of the statutory scheme. The voluntary scheme is obviously much simpler. The conditions lay down that any member of the public may apply at the office of any solicitor whose name is on the panel and ask for legal advice under the Voluntary Legal Advice Scheme. The solicitor may decline to give advice without giving any reason and he does not have to give any explanation to the area committee. The obligation under the voluntary scheme is limited to one interview of not more than thirty minutes for which the fee is not to exceed £1. If the matter cannot be disposed of in thirty minutes, the client should be given an estimate of the cost of further advice or steps which may be necessary. There is thus nothing comparable to the provisions in the statutory scheme for an interview or interviews lasting one hour and thirty minutes for £3.

There are two important provisions which apply both to the statutory and to the voluntary schemes. First, although the 1949 Act refers to oral advice, it is proper to give a client a written note confirming the advice. Secondly, there is no need for advice to be given by a solicitor so long as it is given by a partner or by a "competent and responsible representative" employed in his office.

Finally, we are pleased to learn that area secretaries are inviting solicitors who have entered their names on the panels to obtain up-to-date lists of the offices concerned with the social services. We think it highly probable that some of those who come seeking legal advice will really need the help of someone other than a solicitor.

[*Concluded*] P. Asterley Jones.

WILL ADMITTED TO PROBATE UNSIGNED

SIGNATURE ON ENVELOPE CONTAINING TESTAMENTARY DISPOSITIONS

An interesting point came before Davies, J., upon a motion for the grant of probate in the (unreported) case of *Re Horne, deceased; Bowden and Another* v. *Embledon*, on 9th July, 1958. The question was the sufficiency of the signature of the testatrix upon an envelope containing the paper disposing of the property, which was duly attested by two witnesses, for the purposes of the Wills Act, 1837, s. 9, and the Wills Act Amendment Act, 1852, s. 1.

The material facts very briefly were as follows. The testatrix produced to the two attesting witnesses an envelope in which was a paper containing her testamentary dispositions, and on which were written the words "Will" and "(Mrs.) Gertrude Horne," followed by her address. She then pointed out to the two attesting witnesses that these documents constituted her will, saying, as she drew the paper from the envelope, "This is my will," or words to that effect, and the two attesting witnesses then duly signed the paper, but the testatrix did not sign the paper, although she did sign the indorsement which appeared on the backsheet of the paper, but which was not visible to the two attesting witnesses. The question which then arose was whether the signature of the testatrix on the envelope containing the paper disposing of her property constituted a sufficient signature of the testatrix to the will. It was held that it did, and probate was granted of the two documents, the one, the paper containing the disposition of the testatrix's estate, bearing the signature of the two witnesses, and the other, the envelope containing the same, as being the will of the testatrix, bearing her signature.

Requirements of the Wills Acts

This decision raises in a simple form certain points as regards the signing of the will by the testator, and the witnessing of this signature by the two attesting witnesses; and these have been the subject of a few cases to which reference should be made. Before considering these points, however, the respective Acts should be looked at. The relevant words of s. 9 of the Act of 1837 are: "No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof, by the testator . . .; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator . . ." As pointed out by Langton, J., in *In the Goods of Mann* [1942] P. 146, this section gave rise to much litigation, and by s. 1 of the Wills Act Amendment Act, 1852, a considerable extension was given to the words "at the foot or end." This long section, which it is unnecessary to set out in full, refers to s. 9 of the 1837 Act, and provides that every will shall, so far only as regards the position of the signature of the testator, be deemed to be valid within the said enactment if the signature shall be so placed at or after, or following, or under, or beside, or opposite, to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will. It then goes on to lay down certain circumstances by which no such will shall be affected, providing, however, that the enumeration of these circumstances shall not restrict the generality of the above provision as to the position of the signature (a proviso which, the learned judge in the above case stated, seemed plainly to exclude the application of the rule of *ejusdem generis*), but concludes by enacting that no signature under the Act of 1837 or the Act of 1852 shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Signature made or acknowledged

Coming now to the points arising from the decision of *Re Horne, deceased*, the first point to be noted is that it is not necessary under the statute that the testator should have written his name in the presence of the attesting witnesses; it is sufficient if it was in fact there in his own handwriting and acknowledged by him to be his signature (see *Lewis* v. *Lewis* [1908] P. 1, at p. 5).

Connection between unsigned and signed portions of will

Secondly, there must be a connection between the unsigned and the signed portions of the will. The necessity under these two Acts of there being such a connection at the moment of signature is put thus in *Mann's* case: "In construing and applying these statutory provisions the courts have laid down and held fast to the rule that no document can be allowed to form part of a will which was not physically or otherwise connected to the signed portion of the will at the moment of signature" (*per* Langton, J.). An example of such physical attachment is to be found in *In the Goods of Horsford* (1874), L.R. 3, P. & D. 211. This was the case of a codicil written on a sheet of foolscap paper, the writing covering the first and half of the second side of the sheet. Attached by a string passing through the fold of the sheet about opposite to the termination of the writing, was a separate paper on which was written by the testator, "To which codicil I hereunto annex my seal and signature, dated this 29th day of July, 1874." This was followed by the signatures of the testator and of the witnesses. It was held by Hannen, J., that the execution of the codicil was valid. This physical connection, however, may also be satisfied without there being any mechanical fastening together of the two documents. Thus, in the above case of *Lewis* v. *Lewis*, probate was granted in respect of two half-sheets of paper, which were stated by the testator to the attesting witnesses to be his will, and on one of which was the testator's signature acknowledged as such by him, where the two half-sheets were held together at the moment of attestation by the testator's finger and thumb. Again, there may be such a physical connection in the case of a piece of paper which is sealed up inside an envelope. This on the facts was the position in the early case of *In the Goods of Almosnino* (1859), 1 Sw. & Tr. 508, although no question as to this in fact arose for consideration. There the paper containing the testamentary disposition was sealed up in an envelope, and was signed by the testatrix, but was not signed by the attesting witnesses. But set out on the covering envelope was a memorandum, the words of which were: "I confirm the contents in the enclosed document, in the presence of Richard Morse and Sarah Praeger, this 29th day of December, 1858." Then followed the signatures of the testatrix and of the two above-named persons. It appeared in evidence that one of these, Richard Morse, had written out the memorandum for the testatrix, who had signed it in his presence and in that of Sarah Praeger, and that each of them had in turn signed it in the presence of the testatrix, and in that of each other. Probate was

duly granted of these two documents, the envelope and the enclosed testamentary disposition, but the only points with which the judgment deals are questions as to the admissibility of parol evidence to identify the testamentary disposition which was purported to be confirmed by the memorandum set out on the envelope, and as to the sufficiency of proof of such identity. In commenting upon this judgment in *Mann's* case, Langton, J., makes this reference as regards the physical connection between the sealed envelope and the enclosed testamentary disposition: "If it had been necessary to press the matter so far, it might perhaps have been argued, in *In the Goods of Almosnino*, that the paper and envelope were physically attached at the time of the second signature and attestation thereof, since at that moment the paper was sealed up inside an envelope."

No physical connection—an exception

The cases which have been referred to reinforce the rule that no document can be allowed to form part of a will which was not physically or otherwise connected to the signed portion of it at the moment of signature. An example of a case which ran counter to this rule is *In the Goods of Hatton* (1881), 6 P.D. 204, where probate was refused of an intended will which was written in duplicate, one copy of which was signed by the deceased only, the other being signed only by the two attesting witnesses. In his judgment, Hannen, P., said: "A will may be composed of numerous papers, which together make but one instrument; but these are separate and independent documents." But even here there is a judicial exception to this rule, and this occurs where, of the two documents forming part of the intended will, one of them is an envelope in which the other had been, or would be, placed. Thus, in the above case of *Mann*, the testatrix wrote out her will on a sheet of paper in the presence of one of the attesting witnesses, while the other attesting witness was only present during the writing of the latter part. Then, according to the evidence of both the attesting witnesses, the testatrix, after completing the paper, wrote on an envelope the words: "The last will and testament of Jane Catherine Mann," and pointed out to them both that the documents which she had written were her will, and requested them to sign their names as witnesses—which they did in her presence and in the presence of each other, subscribing the paper containing the testamentary dispositions which she then placed in the envelope. As regards the significance of one of the documents being an envelope, Langton, J., says this: "Secondly, if an unattached paper is to be admitted at all, there is much to be said in favour of an envelope which may reasonably be held to have a far closer relationship to a document which it encloses than a second and wholly disconnected piece of paper. Envelopes are, by their nature, designed to have what may be described as a dependent and secondary existence, rather than an independent and primary life of their own"; and he went on to state that this consideration clearly distinguished the case before him from that of *Hatton* above. It will have been seen that, in *Mann's* case, the paper containing the testamentary disposition had not been placed in the envelope on which was written the testatrix's signature until after it had been signed by the attesting witnesses. In the case with which this article is concerned, *Re Horne, deceased*, however, the envelope contained the testamentary disposition when it was produced to the attesting witnesses, and the testamentary disposition was afterwards drawn out from the envelope for the purpose of its being signed by them. On this aspect of the case it was argued by counsel in support of the motion that (*a*) the action and words of the testatrix constituted an acknowledgment of both documents, that is to say, the paper containing her testamentary disposition and the envelope; and, alternatively, (*b*) by analogy with the facts in *Almosnino's* case, the paper containing her testamentary disposition and the envelope were one document in that they were physically attached at all times except for the brief moments during which the two witnesses attested, and that the action and words of the testatrix constituted an acknowledgment of this one document. It appeared that it was this second point which found favour with the learned judge.

The signature of the testator

It is, of course, vital to any submission that the will is valid that there has been a due compliance, not only with s. 9 of the Act of 1837 in that it has been duly signed by the testator, but also with s. 1 of the Act of 1852 in that it is apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will. It was by reason of the failure of the executrix to satisfy the court that there had been due compliance with s. 1 of the Act of 1852 that the court in *In the Goods of Bean* [1944] P. 83 refused a motion for the grant of probate of two documents, a printed form of will and an envelope, which purported to be the testator's will, where the facts surrounding the signing and attestation of the purported will were such that Hodson, J., stated that, had it been possible to find as a fact that the name on the envelope was put there as the signature to the will, he would have regarded the facts in the case before him as indistinguishable from those in *In the Goods of Mann*. As regards the question whether the name ("George Bean") written on the envelope was a signature at all, he said that he found it impossible to answer it in the affirmative. He said: "The executrix has sworn that she did not know that the deceased had not signed the will form, and it appears to me to be plain that this omission on the part of the deceased was purely accidental in that he failed to sign his name in the space provided for the purpose. The writing on the envelope was equally clearly, I think, put there for the purpose of identifying the contents of the envelope and not as a signature at all. The deceased never indicated that the testamentary document and the envelope together constituted his will. He had written his name not only on the envelope, but also on the indorsement which appears on the back-sheet. It is true that the indorsement was not visible to the attesting witness, whereas the writing on the envelope was seen. Nevertheless, in my opinion, it is impossible to be satisfied that the deceased intended to give effect to the will by writing on the envelope, since in all probability he, like the executrix, was under the impression that he had already signed the will on the form itself."

In connection with this question thus decided in the negative in this case, it may be observed that each of the two points mentioned as regards the indorsement on the back sheet of the printed form was equally present in *Re Horne, deceased*. As regards the question as to the signature on the envelope being a signature at all, it is interesting to observe that in *Re Horne, deceased*, where, as has been stated, the word "Mrs." in brackets appeared on the envelope before the words "Gertrude Horne," Davies, J., raised the point whether the addition of this word in brackets did not prevent it being said that there was a signature of the testator at all. In reply counsel led evidence to prove that the word was a subsequent addition made after the document had been taken

for safe custody to a bank. This evidence was accepted by the learned judge, so that the point was not decided, but counsel reserved the right to argue that this addition did not have this effect, provided that the court was satisfied that the testator intended the writing of her name to be her signature so as to give effect to the writing so signed as being her will.

Security against fraud

In conclusion, it should be noted that it was pointed out by Bargrave Deane, J., that, as regards the two half-sheets put forward as forming the will in *Lewis's* case, in order to avoid fraud they must at the time of execution be attached in some way; but that it did not much matter if they should afterwards become detached. A similar statement was made in *Mann's* case by Langton, J., which is helpful as a guide to the considerations which may move the mind of the court to grant probate in such a case. He pointed out that the rule as to attachment of documents was a rule intended as a security against fraud, but he went on to say that, where the circumstances were so plain and so well-ascertained as to preclude all possibility of fraud, the reasons supporting the strict application of the rule were greatly diminished, although they did not altogether disappear, for there was always a certain safeguard against subsequent possibilities of fraud in the presentation of an unvarying rule. He then pointed out that the will was a holograph document, and was written with the same pen and on the same occasion as the envelope; and that the history of the documents between the time of their making and the date of the death of the testatrix had been clearly ascertained and provided strong confirmatory evidence of the completely genuine nature of the transaction. The above facts, together with the unattached papers, consisting of an envelope, formed the very exceptional circumstances which had impelled the learned judge in *Mann's* case to accede to the motion for the grant of probate.

Similarly, the history of the documents in *Re Horne, deceased*, provided strong confirmatory evidence of the completely genuine nature of the transaction in that there, after attestation, the paper was replaced in the envelope and retained in the custody of the testatrix, until it was deposited by her in her bank some years later, when, as has been stated, the word "Mrs." in brackets was added to the envelope; it then remained in the bank until her death.

M. H. L.

Landlord and Tenant Notebook

SURRENDER OF CONTROLLED TENANCY

WHEN Greene, M.R., said in his judgment in *Brown* v. *Draper* [1944] K.B. 309 (C.A.), "There are, we think, only two ways by which a tenant whose contractual tenancy has come to an end can lose the protection of the [Rent Restriction] Acts. One is, as we have stated, by giving up possession. The other is by an order against the tenant for recovery of possession," the statement had, in some quarters, the effect of a challenge. Mr. Megarry's sixth edition proclaimed: "Nevertheless, there appear to be at least four ways in which a statutory tenancy may be determined"; in the eighth edition "four" is replaced by "six". And the illustrations given are, as one would expect, cogent in showing that the judicial pronouncement called for modification, which has now been effected by *Collins* v. *Claughton* [1959] 1 W.L.R. 145; *post*, p. 111 (C.A.).

Jurisdiction

Though it was Greene, M.R.'s above-mentioned judgment which began the attack on the *numerus clausus* proposition, it is of interest to recall that a similar statement, couched in less categorical language, had been made more than twenty years earlier by Scrutton, L.J., in *Barton* v. *Fincham* [1921] 2 K.B. 291. The facts of that case were that a tenant had agreed, in consideration of £20 down, to give the landlord notice to quit and possession on a specified date. The date came but the tenant stayed. Bankes, L.J., pointed out in his judgment that the Legislature had in clear and unmistakable language restricted the jurisdiction of the court; security of tenure was conferred by fettering the court rather than the landlord; and jurisdiction could not be given by agreement. And Scrutton, L.J., described the position in these terms: "A statutory tenant can leave of his own free will, surrendering his tenancy, which is probably the principal matter described as 'as any other reason determining the tenancy' in s. 15 (3) of the Act of 1920. But *if he is in possession and unwilling to give it up*, possession *can only be obtained by an order of a court*, which order can only be made if certain specified facts are proved" (all italics mine).

Vicarious possession

Brown v. *Draper* was the first of a number of cases arising out of matrimonial troubles. The tenant left the house; his wife, and his furniture, remained. The landlord gave him notice to quit, sued the wife, and called the husband as a witness: he deposed that he had finished with the house and had no further claim to it. Holding that he was still in possession, Greene, M.R., made the pronouncement referred to which, I suggest, echoes the statement made by Scrutton, L.J., in *Barton* v. *Fincham*.

Then, in *Old Gate Estates* v. *Alexander* [1950] 1 K.B. 311, a statutory tenant likewise left wife and furniture in the demised dwelling-house, and followed this action by signing a document revoking his wife's authority to occupy it. This case was decided on the somewhat narrow ground that he had left his furniture behind; but *Middleton* v. *Baldock* [1950] 1 K.B. 657, in which the facts were substantially similar, gave us Denning, L.J.'s famous exposition of the special status of a deserted wife. "She is . . . lawfully there, and, so long as she remains lawfully there, he remains in occupation by her. . . . The landlord can only get possession if the rent is unpaid or some other condition of the Acts is satisfied entitling him to possession."

Surrender by operation of law

In different circumstances, *Foster* v. *Robinson* [1951] 1 K.B. 149 (C.A.) then gave us an inkling that Greene, M.R.'s "giving up possession" (and Scrutton, L.J.'s "give it up") might merit liberal construction or modification. A landlord had agreed with his tenant that the tenancy (a yearly one) of the dwelling-house—a cottage—should cease and that the tenant, who was aged and infirm, should remain in occupation

rent free till his death. This occurred some four years later; whereupon his daughter (who had resided with him) laid claim to a transmitted tenancy (Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*)).

It was held that, though what applied to the determination of a statutory tenancy applied to the determination of a protected controlled tenancy (Bankes, L.J.'s statement about jurisdiction would clearly cover the position), there had been a surrender of the yearly tenancy by operation of law, as the result of a genuine transaction; since that surrender the late tenant had been unprotected.

Lord Evershed, M.R., invoked, in his judgment, the doctrine of estoppel: ". . . if there is a new arrangement which the tenant represents by his conduct that he is asserting, then he is estopped from denying that the landlord was capable of entering into that new arrangement, and, if the new arrangement could not be entered into if the old agreement subsisted, it follows that the tenant is equally prevented from denying that the old agreement has gone." This invites two comments: it does not accord very well with Lord Thankerton's "it is idle to suggest that . . . estoppel . . . can give the court a jurisdiction under the Rent Restrictions Acts which the statutes say it is not to have," in *Stone* (*J. & F.*) *Lighting and Radio Co., Ltd.* v. *Levitt* [1947] A.C. 209; and the possibility of a co-existence of two apparently incompatible relationships—in that case a contractual and a statutory tenancy—has since been clearly demonstrated by *Moodie* v. *Hosegood* [1952] A.C. 61.

Subject to these, *Foster* v. *Robinson* showed that a protected tenancy can be determined without an order of court and without actual evacuation by the tenant.

Later examples

Nightingale v. *Courtney* [1954] 1 Q.B. 399 (C.A.) and *The Bungalows* (*Maidenhead*), *Ltd.* v. *Mason* [1954] 1 All E.R. 1002 (C.A.) then showed us what would not, and what would, effect a surrender of a protected tenancy by operation of law. In the one, a statutory tenant of part of a dwelling-house entered into a formal contract to purchase the reversion of the whole house; he then ceased paying rent, but failed to complete, and the landlord-vendor rescinded the contract and sued for possession. The contract had not provided for any interest to be payable and the Court of Appeal, disagreeing with the county court judge, held that, as the contract had given him no right of occupation and in fact provided for vacant possession of another part of the house to be given to the purchaser on completion, he had been in possession as statutory tenant throughout. In *The Bungalows* (*Maidenhead*), *Ltd.* v. *Mason* a protected tenant's widow had agreed to a new tenancy after paying rent as a statutory tenant for over two years. The agreement was made at the suggestion of an agent appointed by purchasers of the reversion, and a new rent book was issued which contained terms different from those set out in the old one. The widow having died, her daughter (who resided with her, etc.) successfully laid claim to a "transmitted" tenancy (*Pain* v. *Cobb* (1931), 47 T.L.R. 596—no second transmission on death, not applying to the situation).

Novel features

Such was the position when *Collins* v. *Claughton* came to be decided. Like some of the earlier cases which I have mentioned, it was a consequence of unhappy differences between husband and wife, and of unhappy differences between income and expenditure; but other circumstances showed that the facts were not on all fours with those of any decided case.

The action was for possession of a controlled house originally let to the defendant in 1945. He was often in arrear with rent and had become a statutory tenant when his wife left home. She returned, and a reconciliation was effected, one of its terms being that "the rent book should be put in her name." On 10th May, 1956, he wrote a letter asking the landlords to change the name on the book, which he enclosed, and stating that his wife was going to see that the rent was paid in the future herself; and his wife signed that letter. The landlords readily agreed. In January, 1957, the wife left home again and after taking unsuccessful proceedings for desertion entered forcibly and took her furniture away. On 14th September she gave the landlords notice to quit and the landlords then brought their action.

Comparing the position with that which obtained in the earlier cases, one notes that the defendant could not assert that his wife was still in possession by reason of furniture of hers remaining on the premises; or that any grant, either of a licence or of a tenancy, had been made to him by the plaintiffs; or that she was a deserted wife. And the Court of Appeal upheld the county court's decision that the letter of 10th May had operated as a "notional surrender of the statutory tenancy and the commencement of a new tenancy in the wife."

Comment

The judgment (delivered by Roxburgh, J.) applies the reasoning of *Foster* v. *Robinson*; the learned judge considered that when, in the course of his judgment in that case, Lord Evershed, M.R., spoke of "there must be an actual giving up of possession *or its equivalent*," he was either construing or modifying Greene, M.R.'s statement in *Brown* v. *Draper*. But the fact that Roxburgh, J., cited a passage in Lord Evershed, M.R.'s judgment in which the doctrine of estoppel was applied to the situation suggests that, but for the terms of the letter to the plaintiffs which the defendant had sent to them on 10th May, 1956, the question of vicarious occupation might have been raised and led to interesting argument. The question of a deserted wife's interest in the matrimonial home has been the subject of a number of decisions, resulting in a tangle mentioned in one of three articles devoted to the subject in our "Conveyancer's Diary" in 1955 (99 Sol. J. 158, 690 and 719), since which *Churcher* v. *Street* [1959] 2 W.L.R. 66; p. 55, *ante*, has made a contribution to the law thereon. There appears to be no reason why a deserted husband should not have as much an equity as a deserted wife, and, assuming that the defendant in *Collins* v. *Claughton* was a deserted husband (it will be remembered that his wife's summons for desertion was dismissed), the fact that there had been a new arrangement which he had represented by his conduct that he was asserting would be vital to the decision. The circumstance that he may not have appreciated, when in his new-found happiness he wrote the letter of 10th May, 1956, that he was parting with the protection of the Rent Acts, would be as irrelevant as the circumstance that that happiness proved short-lived; but the correctness of the decision also depends on the applicability of the doctrine of estoppel to the facts, on which, in view of *Stone* (*J. & F.*) *Lighting & Radio Co., Ltd.* v. *Levitt* (and of *Barton* v. *Fincham*), one would have liked to have found more argument.

R. B.

In The Law Society's Intermediate Examination, Trust Accounts and Book-keeping portion, held on 13th and 14th November, 1958, 505 candidates entered and 275 passed.

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YOUNG DELINQUENTS AND THE LAW

By C. A. JOYCE, M.B.E., M.A.
Headmaster of a Home Office Approved School

After his previous experience as Deputy Governor at Durham Prison, Governor of H.M. Boys' Prison, Wormwood Scrubs, Governor of Camp Hill Borstal Institution, Isle of Wight, and first Governor of H.M. Hollesley Bay Colony, Suffolk, in 1941 Mr. Joyce was appointed to his present office of first Headmaster of the Cotswold Home Office Approved School in Wiltshire, which is under the management of the London Police Court Mission.

"Boys aren't what they were when I was a boy"—and that's our fault. I am compelled to say that when I was first asked to try to write down my considered opinion about the attitude of young persons towards the law in these days I realised that it would take a great deal of thought and self-examination. The views I am now expressing are my own and I ought to make it abundantly clear that neither the Home Office nor the London Police Court Mission are in any way responsible for them.

I think the time has come when certain reforms are no longer merely desirable but are necessary. The younger generation to-day is being allowed, and even encouraged, to flounder about in a mess of insecurity and uncertainty; it is no wonder that they are taking the law into their own hands and, in very many cases, sneering at orthodox justice of all kinds. It is my experience that boys despise nothing so much as the person who "lets you get away with it" and, *per contra*, they have not only a genuine respect but considerable affection for the grown-up who is extremely human but who will stand no nonsense. Let adults beware! We are being quite unfair to young people when we give them the impression that they know as well as their elders—or even better.

Absence of religion

For example, there is no longer a background of religion. Over 90 per cent. of the boys who have passed through our school in the last eighteen years say quite openly that they have no time for religion and that they gave up attending church or chapel at the age of ten. Their general reason is that they find it boring, uninteresting and nothing to do with the job of living. They say unequivocally, "We can do without religion," and in many cases the parents are not bothered, or they are not sufficiently well instructed themselves, to do anything about it. The Ten Commandments have gone out of fashion and the majority of young people to-day do not even know what they are.

One of the first reforms that I would like to see introduced is a serious inquiry into the teaching of religion in schools. I protest most strongly about the rule which says that one may not ask the candidate for a teaching post what his religious views are. It is my opinion that academic qualifications are secondary to the ability to teach a child how to live. To hark back to the "good old days" is not the answer, I know, but the fact remains that in those days our educational system did pay considerable attention to things like truth, honesty, clean living and even "fighting clean," and I believe that unless we get back to moral training as a primary function in schools, the present situation will continue and even deteriorate still further.

School discipline

Far too frequently to-day we hear about the absence of proper discipline in the schools, but now I am coming to the defence of the teaching profession. Schoolmasters from all over the country tell me that they dare not enforce discipline because of stupid parents who, lacking either the desire or the ability to control their own children, take issue in the courts when corporal punishment has had to be used. Were it once established that the magistracy is behind the use of proper sanctions, parents would not resort to legal action unnecessarily and school discipline would profit thereby.

The question of punishment has been the subject of much woolly thinking, and pseudo-psychologists have much to answer for. Much nonsense has been talked giving the impression that punishment and reform are mutually exclusive terms. This is not so; in fact, in very many cases, they are complementary. It is essential, however, to make a child realise that punishment is a matter of cause and effect—something arising as a direct result of his own action, and not a thing enforced by an irascible adult. It is true neither of life here nor hereafter that people are not responsible for their actions (save in such cases as fall clearly into the purview of mental incapacity).

Attitude of magistrates

I am not making a wholesale attack on the junior judiciary, but it would be less than honest not to say that I think there are far too many magistrates who tend to forgo their functions as judges in favour of a policy of "understanding." My view is founded on a good deal of research among young people who have appeared before the courts. To pat youngsters on the head and say, in effect, "There, there, dear, we *do* understand," is to give them a totally false impression of their behaviour and of its effect on society in general. It is my submission that the first function of a court is to make it abundantly clear, by word and by action, that anti-social and/or loutish behaviour will not be tolerated. Having said that, we can go on to try to understand the motives behind the behaviour and do what we can to cure the trouble. But the order is very important.

Corporal punishment

In common with many people, I do not like violence in any form, but if young thugs propose to use violence as a matter of policy they should not be allowed to have a monopoly of it. I realise that sentiment can make bad law, but I do not regard it as sentimental to devote a certain amount of consideration to the victim of an assault as well as to the aggressor.

Sometimes in our own school a boy is reported to me for using violence on another boy. My answer to that is, "I don't like violence but if you hit smaller boys I shall hit you." And what is so interesting is that, with that ultimatum, the violence stops—he no longer uses it, so mine becomes unnecessary. Having got to that stage, I can then reason with the boy concerned and try to get him to see the whole thing in perspective. Surely the *primary* duty is the protection of the innocent and not the understanding of the offender: that comes later, and I cannot understand why the opponents of corporal punishment so frequently talk as if the aggressor is being dealt with harshly and unreasonably.

The forces of the law will never resort to violence as a first principle. "If you don't hit other people we shall not hit you. *The choice is yours.*" I wish we could say something that would be thoroughly understood by the people who carry weapons for the deliberate and express purpose of doing injury to others. Let it be made clear to the young men who take to the bestial forms of violence, that are all too common in these days, that they are unlikely themselves to escape unscathed.

The results of the recent sentences in the case of the riots in Notting Hill are not without significance. It is true that the judge was severe, but, in my opinion, rightly so. At least no one can dispute the effectiveness of his action.

I believe that, exactly as there is an automatic disqualification in the case of dangerous driving, there should be an equally definite award of corporal punishment for *premeditated* violence. (When there were mitigating circumstances, the court would obviously take them into account.)

Where violence in any form is threatened or used I think the courts *must* bear in mind that their major function is the preservation of the Queen's peace and not the psychiatric study of those who break it.

Finally, nothing I have said in this article alters the fact that I believe in the general goodness of human nature. I have spent my life trying to understand and help those who have broken the law, and I shall continue to do so, but I am convinced that, although constant dripping will wear away a stone, there are occasions when a somewhat severe blow will shape it much more quickly and to good effect.

HERE AND THERE

WHO WAS SHE?

PROBABLY it's unreasonable to be disappointed with a writer for not doing something he isn't trying to do. If all he's after doing is to string a few anecdotes together to amuse the jaded readers of the evening papers, why ask for a real picture of the figure behind the anecdotes? For travellers ordered out of their train on some remote and desolate suburban platform or even punitively shunted into a siding simple anecdotes are probably the thing. All the same, a recent anecdotal newspaper article on Mrs. Georgina Weldon did far less than justice to that remarkable lady. It was rather like telling stories about Wellington or Handel or Pasteur, without any sort of reference to their status in war, music or medicine. Well, who was Mrs. Weldon? Where did she come from? How did she come to get involved in so much litigation in her middle forties as to become a national figure? To start with she was an extremely beautiful woman born to wealth and position. An early portrait of her by G. F. Watts reveals both loveliness and intelligence. Her father's standards in the matter of suitors were exacting. No one with an income of less than £10,000 a year need apply. £2,000 was beggary—£1,000 starvation. Unfortunately at the age of twenty-three she fell in love with a young Hussar officer with an income of something under £200 a year and a load of debts. They were quietly married in 1860 and her father never forgave her or saw her again. Accustomed though she was to ease and luxury, she settled down happily to love in a cottage at Beaumaris in Anglesey, cooking and housekeeping, managing with a couple of little Welsh girls and no other servants, wearing an apron, even when county people called, and keeping no carriage. Her husband's commission was sold and by good management and economy she got her husband's debts paid off. In 1869, through the influence of an old friend of her family, Sir William Alexander, Attorney-General to the Prince of Wales, she obtained for him the post of Rouge Dragon Pursuivant at the College of Arms. Also his own affairs were improving and expectations of inheritance which he had had were being realised. They took a pleasant Georgian house in London in Tavistock Square, formerly occupied by Dickens.

THE WRONG

GEORGINA was not only charming, beautiful and well-connected; she was also a talented singer, who could command a fee of £30 for a concert. Musical, literary and artistic figures frequented her house. Gounod, a refugee from the Franco-Prussian war, made a prolonged stay. Her lively, unconventional disposition was altogether foreign to the rigid standards of Victorian good society. Her marriage was childless and she formed a scheme for conducting a self-supporting school of music for orphans. She also outraged convention by taking an active interest in spiritualism. Her husband began to find her an embarrassment and this is what he did: One day in 1878 two mysterious callers arrived giving the names of Shell and Stewart and claiming to be spiritualists who wished to place some children with her. After some conversation they departed. Next day two different strangers giving the same names succeeded in intruding on the same pretext. All four visitors were in fact doctors, and twenty minutes after the departure of the second couple a madhouse keeper with two female nurses drove up in a landau to remove Mrs. Weldon to an asylum on an order signed by her husband and one of the medical men. This and a second similar attempt to kidnap her were with difficulty repulsed and immediately she left the house and went into hiding. It was the only thing to do, for, as the lunacy laws then stood, it was the easiest thing in the world to shut up an inconvenient wife or relative, and before the Married Women's Property Act, 1882, a married woman was virtually without the possibility of resort to the courts.

THE RIGHTING

IT was the passing of the Act that gave Mrs. Weldon the opportunity to set about rehabilitating herself by legal process, and, since she was not a wealthy woman, she acted for the most part in person. In 1883 she started twenty-five cases and for the next six years her exploits in the courts were the talk of England. Her manner was intensely feminine but she thought and expressed herself with masculine clarity. For fashion she had no time and a "Vanity Fair" cartoon of the period depicts her in a rather nun-like costume, all black with a little cape and a bonnet and black satin hood framing her still youthful face. (The general effect is reminiscent of one of the religious Orders of nineteenth-century foundation, say the Faithful Companions.) From a little office in Red Lion Court off Fleet Street she conducted in due form her campaign against all who had had a hand in traducing her. She won all her principal cases, most of them conducted in person, before judges of varying degrees of sympathy and hostility. She

always kept her head and her temper and even hostile judges found it was best to be polite to her. She never became a litigious monomaniac but retained a buoyant and lively interest in all manner of things, music, literature, art. Although, once her great work of rehabilitation was complete, the courts saw less of her, she did not altogether abandon them. She was in her middle seventies when she made her last appearance in court, conducting a libel action in person against so formidable an opponent as F. E. Smith. Her health and voice were failing and, not surprisingly, she lost. An appeal was pending when she died suddenly in January, 1914. She should really be the patron saint of all women at the Bar. Not only was she a remarkable advocate and personality. Her agitation had contributed to reforms in the law relating to lunacy and to divorce, and also to musical copyright. She has a permanent place in legal history and somewhere in the Law Courts that " Vanity Fair " picture of her ought to be visible.

RICHARD ROE

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

Maintenance Orders : Wife's Earning Capacity

Sir,—The Departmental Committee on Matrimonial Proceedings in Magistrates Courts has, I think it will be generally agreed, produced a useful draft Bill, despite the conservative attitude this committee adopted to their work and the restrictions they imposed upon themselves by a narrow interpretation of their terms of reference. It is unfortunate that, for instance, they did not feel able to consider a provision that a maintenance order should end automatically upon the remarriage of the spouse in whose favour it is made. This was a recommendation of the Royal Commission on Marriage and Divorce. The draft Bill, however, does represent a considerable move towards sex equality ; this time in favour of husbands.

There is one particular aspect of sex equality which may lie buried in the committee's report unless some publicity is given to it. This concerns the question whether a wife's earning capacity as well as her actual earnings can be taken into account in making a maintenance order in her favour. The Royal Commission pointed out the legal position was uncertain but recommended that in every case the court should have regard to what it termed the wife's potential earning capacity. The departmental committee also considered this problem and, in construing what one expects will be the Act of Parliament on this subject in due course, it will be helpful to bear in mind the following expression of the committee's opinion about taking a wife's earning capacity into account :—

" It was suggested to the committee that under the present law the court may not take into account a wife's earning capacity as distinct from her actual means and that the draft Bill should give express power to do this. But the committee is satisfied that, although practice may differ, there is no such rule and that the requirement in s. 5 (*c*) of the 1895 Act and cl. 2 (1) of the draft Bill that the court shall have regard to the ' means ' of the spouses does not preclude it from taking into account other relevant circumstances, including earning capacity."

ROBERT S. W. POLLARD.

London, S.W.1.

Industrial and Commercial Finance Corporation, Ltd.

Sir,—In the interests of accuracy I write to point out that in connection with your review [on p. 53, *ante*] of the work entitled " Financial Problems of the Family Company " by my colleague, Mr. A. R. English, the year of the formation of this Corporation was 1945 and not 1955 as stated in the feature.

B. J. SIMS,
Chief Legal Officer,
Industrial and Commercial Finance Corporation, Ltd.

London, E.C.2.

The Solicitor's Income

Sir,—Forty-five years ago as a newly qualified man after five years unpaid articled clerkship (being a " country cousin ") I was glad to take a " seat " in a London office at nothing per annum, my father (who was also pleased with this) paying all my expenses. Twelve months later (being unfit for military service) I got a post as conveyancing managing clerk with a first-class London firm. My father and I considered that I was well paid at £150 per annum.

I would like to know the views of other experienced solicitors in private practice on the following :—

(*a*) (i) An unmarried man getting £850 per annum less P.A.Y.E. ought to be able to save substantially.

(ii) Such a man, who thinks he cannot afford to marry, must have extravagant ideas.

(*b*) After about 20 years in private practice—

(i) a solicitor working by himself with such staff as he can get cannot hope to make more than £2,500 in gross profit costs in London—in the country it would be less ;

(ii) the average solicitor after paying his Sched. D tax and necessary expenses, which are not allowed as deductions for tax purposes, has about £1,100 on which to maintain his home and family ;

(iii) in order that a normal-sized firm of three or four partners may have that amount of spending income per partner, it will require one qualified clerk, two male clerks and seven typists ;

(iv) in order that such a firm may have that amount per partner, the firm must earn at the rate of £27 to £35 (about £9 per partner) in gross costs per working day of 8½ hours, there being now only 248 full working days per annum.

(*c*) An unqualified clerk must produce twice his salary to justify his position and a qualified clerk must produce 2½ times his salary.

(*d*) A solicitor's work is vocational and should not be compared with an industrial appointment.

MAX. C. BATTEN.

London, E.C.4.

Wages by Cheque

Sir,—We have paid wages by cheque to all staff (fifteen to sixteen) for some time. None has objected. It saves the time of the cashier, so he says, because he no longer has to count out and packet the cash.

CUNNINGTON, SON & ORFEUR.

Braintree,
Essex.

Mr. JOHN INCH, deputy clerk and solicitor to Aldridge Urban District Council, has been appointed clerk to Wellington Rural District Council, in succession to Mr. J. E. Morris.

Mr. NORMAN ROBERTS, treasurer of Mirfield Urban District Council, has been appointed clerk of Northam, North Devon, Urban District Council.

Country Practice

VINTAGE WESTMINSTER

Now that January is over, and a good job too, you might consider yourself safe from the expert who reviews the previous year's work, all for the benefit of his readers. At the risk of being mentioned rather nastily in some adjoining column, I would guess that readers will be immune, for the next eleven months, from "Conveyancing Decisions of 1958"; "1958: an Epic Year for Landlords (or Company Directors, or Taxpayers, or Common Lawyers)." The same goes, in other journals, for such topics as "1958 and the Fish Filleting Crisis"; "New Plumbing Techniques of the Past Twelve Months"; and, no doubt, "1958—a Year of Steady Progress in the Potato and Carrot Division."

The trouble is that some years scarcely deserve a mention. As a special treat, therefore, instead of reviewing Statute Law of 1958—a dreary year—I will devote myself to the legislation of 1905.

1905 was a record year. After twelve months of unremitting toil, Parliament produced only twenty-three Acts of Parliament. Including an Appropriation Act (the equivalent of a modern Finance Act) running to eighteen pages, the entire year's legislation spread itself over only eighty-two printed pages. Nothing so short had been seen for over a century, and nothing so short has been seen since.

Parliament was largely "blue" in colour; it was the last year of the last Conservative administration to be seen for quite some time. The ministers seemed mostly to be lawyers, in a genteel sort of way, and massive reform had no particular appeal to the government of the day. The following year was to be election year. As a conversational gambit, try this on the elderly—"Where were you on Election Night, 1906?" My father was at the Sheffield Conservative Club at the time, and gives a graphic account of stern iron-masters moaning in corners as the news was announced from the new-fangled ticker machine. The Liberal landslide had begun.

Nevertheless, the Statutes for 1905, which can be read at one sitting, are full of good stuff. Chapter 3, An Act to amend the Law as to the Hours of Closing of Licensed Premises on Christmas Day in Ireland, is a real period piece repaying careful study. The student will do well to cover up the distracting Schedule to the preceding Act, which allows fourpence per day for (*inter alia*) candles, vinegar and salt for soldiers billeted in pubs.

Chapter 5 deals with an annuity voted in favour of the Right Honourable William Court Gully, and the interest is maintained in chap. 7, dealing with a probe (investigation) into South African War Store fiddling (irregularities).

At chap. 12 all levity is left aside as we read An Act to provide for the Settlement of certain Questions between the Free Church and the United Free Church in Scotland. As far as I can make out, this is an amended and consolidated Act for the Pacification of the Highlands. It went out of its way to *repeal*—partially, anyhow—an Act for settling the quiet and peace of the Church (passed in 1693). Aye, mph'm.

Almost twenty pages are devoted to the Trade Marks Act, and this leaves the authors with very little space indeed to devote to such topics as Customs Duties in the Isle of Man, Construction of Works for the purposes of the Royal Navy, Expiring Laws Continuance, and Informal Marriages—each being dealt with in an Act of two sections only. The Act for removing any invalidity or doubt attaching to Marriages by reason of some informality, being chap. 23, and the last in the book, brings to an end an admirably presented series of statutes in which the interest never flags.

The Private and Local Acts are only summarised. An Act to confer further powers on the Baker Street and Waterloo Railway Company gives promise of more good reading for the leisure hour. Blackpool Corporation is, or are, given extended powers "in regard to the supply of sea water"—without which Blackpool could hardly have developed into a watering place. And at Southend, powers are given for the construction of piers (plural). I thought you ought to know.

"HIGHFIELD"

"ANNOYANCE"

SOME time ago a young woman police constable went up for promotion. "How many prostitutes have you arrested?" she was asked. "None." "Why not?" "Because I've never yet seen a man who was annoyed." Sad to say she was not promoted, but the new Street Offences Bill will have at least one happy result if the proposal to delete the requirement of annoyance from charges of prostitution is carried. The legal fiction of annoyance will no longer stand between an honest police officer and promotion. In the past the evidence of what annoyance has been caused was perfunctory in the extreme so that it is difficult to see what difference the repeal of the words calling for its proof will make. In a few courts where some attempt has been made to elicit evidence of annoyance, the magistrates are told that "a man who had been solicited looked annoyed." So many of us as we go along the street look annoyed and so many, what with the weather and the taxes, have good reason for so looking, that this alone gives some idea of the hazards of prostitution as a profession. A more ambitious effort is: "She got in his way and he pushed her aside." When pressed the officer usually has to admit that the pushing, too, is a legal fiction. It must be only upon the rarest occasions that a prostitute actually touches a prospective client. How successful the proposed changes will be in discouraging prostitution remains to be seen. The fear is that the increased penalties with a prison sentence after a third conviction will certainly add to the temptations with which the police are assailed, many of them earning not a tenth of what an enterprising young woman can make as they beat the same streets together. How real is the temptation, and how much greater it will be with the increased penalties, can be imagined when it is realised that only some thirty years ago a police sergeant patrolling Soho salted away a cool £18,000 in bribes which, the law subsequently held, could not be taken away from him. After he had served a sentence of imprisonment, he had the rest of his days to enjoy his easily amassed fortune.

F.T.G.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

HUSBAND AND WIFE: MARRIAGE: PRESUMPTION OF VALIDITY

Hill *v.* Hill

Lord Somervell of Harrow, Lord Denning, the Rt. Hon. L. M. D. de Silva. 14th January, 1959

Appeal from the Court of Ordinary of Barbados.

In 1925, Ernest Clarence Hill (hereafter called "the deceased"), a married man, aged fifty-four, with three children, of whom the present respondent was one, met Miss Marion Allanzena Green, then aged sixteen, and shortly afterwards they lived together and continued to do so until his death on 30th April, 1955. Of that union there were eight children, of whom the appellant was one. On 19th September, 1952, the deceased, having made provision for his legitimate children, made a will disposing of his estate, valued at about $100,000, in favour of Miss Green and some of the eight children, and appointed her and the appellant executors. On 24th October, 1954, the deceased was ill and in a nursing home, where an operation was performed. While still in the home a ceremony of marriage took place between the deceased and Miss Green on 27th October, 1954. The deceased was then eighty-three. His first wife had died before the date of the ceremony of 1954. If that marriage was valid the will of 19th September, 1952, was revoked by virtue of s. 13 of the Barbados Wills Act, 1891. In the proceedings out of which this appeal arose the appellant had petitioned for a declaration that the marriage of 27th October was invalid and for the grant of probate of the will of 19th September, 1952. The respondent had petitioned as heir-at-law for letters of administration on the basis that the deceased had died intestate. The appellant now appealed against the decision of the chief judge in the Court of Ordinary of Barbados who had dismissed his petition. The two questions raised were: (1) Whether at the time of the impugned marriage the deceased had capacity to understand the nature and consequences of the marriage; (2) whether the marriage was invalid because the requirements of s. 2, proviso, of the Barbados Marriage Act, 1904–9, were not complied with, namely, that in the case of a Christian marriage "whenever the form and ceremony used shall be other than that of the Anglican Church in this Island," as was the case here, "each of the parties shall in some part of the ceremony make" declarations that "I know not of any lawful impediment" to the marriage, and that he (or she) took the other party to be his (or her) lawful wedded wife (or husband). Neither party made those declarations.

LORD SOMERVELL OF HARROW, giving the judgment, said that their lordships were of opinion that a failure to comply literally with the proviso to s. 2 of the Act did not invalidate the marriage. It must, however, be clear that each party intended to contract a Christian marriage and there must be in the service passages which made plain the necessity for the absence of lawful impediment and the taking of one another to be the lawful wedded wife or husband. To rebut the presumption of validity where there was evidence of a ceremony of marriage, followed by cohabitation, a balance of probabilities was insufficient, the evidence must be decisive. There was here a conflict of evidence as to what happened at the ceremony, but there was no sufficiently satisfactory or decisive evidence to establish the invalidity of the ceremony. (His lordship referred to *Catterall* v. *Sweetman* (1845), 1 Rob. Eccl. 304, at p. 320; *Beamish* v. *Beamish* (1861), 9 H.L. Cas. 274, at p. 339, and, on presumption, to Halsbury's Laws of England, 2nd ed., vol. 16, p. 599.) The presumption applied equally where, as here, cohabitation preceded as well as followed the ceremony: *Piers* v. *Piers* (1849), 2 H.L. Cas. 331. Further, on the evidence the point as to capacity clearly failed. Appeal dismissed. The costs of each side would come out of the estate.

APPEARANCES: *Neil Lawson*, Q.C., and *John Wilmers* (*Rashleigh & Co.*); *John Latey*, Q.C., and *E. Bruce Campbell* (*Minet, May & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 127**

Court of Appeal

RENT RESTRICTION: WHETHER GIVING UP PHYSICAL POSSESSION NECESSARY FOR VALID SURRENDER OF STATUTORY TENANCY

Collins and Another *v.* Claughton

Jenkins and Romer, L.JJ., Roxburgh, J. 15th December, 1958

Appeal from Leeds County Court.

On 10th May, 1956, the defendant, who was then statutory tenant of a dwelling-house within the Rent Acts, wrote a letter, which both he and his wife signed, to one of the plaintiffs, the landlords, in the following terms: "As I have come to an agreement with my wife on changing name in rent book into her name . . . would you be kind enough to grant same as she is going to see [the rent] is paid in the future herself." The plaintiffs agreed to this proposal, and thereupon the rent book was changed into the wife's name and she paid the rent instead of the defendant. In January, 1957, the defendant's wife left him and he remained in occupation of the premises. On 14th September the wife gave notice to the plaintiffs that she was terminating the tenancy on 14th October, 1957. The defendant thereupon offered to pay the rent but the plaintiffs refused and subsequently they commenced proceedings against him claiming possession of the premises on the footing that he was a trespasser. The county court judge granted an order for possession, holding that the letter of 10th May, 1956, acted upon by all parties, operated as a notional surrender of the statutory tenancy, and the creation of a new tenancy in the wife. The defendant appealed. *Cur. adv. vult.*

ROXBURGH, J., delivering the judgment of the court, said that the foundation of the argument for the defendant, both in the county court and before the Court of Appeal, had been laid upon passages in the judgment of the court delivered by Lord Greene, M.R., in *Brown* v. *Draper* [1944] K.B. 309, at p. 313, especially the following: "A tenant remaining in possession cannot lawfully contract not to avail himself of the protection which the Acts give him, if and when the landlord takes proceedings against him to recover possession. If he wishes to place himself outside the protection of the Acts without putting the landlord to the necessity of taking proceedings, his proper course is to deliver up possession. Unless and until he does so, he is under the shelter of the Act, whether or not he so desires. No contract, and *a fortiori* no mere statement of his wishes or intentions, can deprive him of the statutory protection." The questions involved in the present appeal were (1) whether (apart from the Rent Acts) the transaction indicated by the letter of 10th May, 1956, which was acted upon by all parties, would have effected a surrender by operation of law of the defendant's tenancy and the creation of a tenancy in favour of his wife, and (2) if so, whether the Rent Acts prevented the transaction from having this effect. The defendant remained in occupation throughout, and, accordingly, this question resolved itself into the question whether the passage in Lord Greene's judgment in *Brown* v. *Draper*, *supra*, which had been cited, required physical possession to be given up, and if so, whether it had been modified by subsequent decisions of the Court of Appeal. The test to be applied in the solution of the first question was to be found in *Foster* v. *Robinson* [1951] 1 K.B. 149, see *per* Lord Evershed, M.R., at p. 155. Applying that test, the county court judge was right in holding that (apart from the Rent Acts) the defendant's tenancy was surrendered in May, 1956, by operation of law. As to the bearing of the Rent Acts upon this problem, in view of Lord Evershed's explanation in *Foster* v. *Robinson* at pp. 154, 158, 159, of the observations of Lord Greene in *Brown* v. *Draper*, *supra*, and the observations of Asquith, L.J., in *Rogers* v. *Hyde* [1951] 2 K.B. 923, at p. 930, and the decision in *Bungalows* (*Maidenhead*), *Ltd.* v. *Mason* [1954] 1 W.L.R. 769 it must now be treated as settled that as a matter of law a statutory tenant could effect a valid surrender by operation of law in the circumstances indicated by Lord Evershed, M.R., in *Foster* v. *Robinson*. Accordingly, the court was of opinion that the county court

judge came to a right conclusion in the present case, and the appeal would be dismissed. Appeal dismissed.

APPEARANCES: *Donald Herrod* (*Kingsley Wood & Co.*, for *Wade, Kitson & Rigg*, Leeds); *C. P. Heptonstall* (*Emsley & Son*, Leeds).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 145**

Chancery Division

LANDLORD AND TENANT: BUSINESS PREMISES: TERMS OF NEW TENANCY: EXISTING RIGHT TO DISPLAY ADVERTISING SIGNS

_In re_ No. 1 Albemarle Street

Upjohn, J. 15th December, 1958

Adjourned summons.

Business premises in Albemarle Street, Piccadilly, were let to the applicants for a term of twenty-one years by a lease expiring on 25th December, 1957. By cl. 7 of the lease the lessors authorised and permitted the lessees to maintain during the continuance of the lease "the advertising signs . . . in their present position facing Piccadilly and Albemarle Street outside the building of which the demised premises form part . . ." On the outside of the building there were, and had been since before the lease came into being, four signs advertising a product of the applicants. On an application for a new tenancy under s. 24 of the Landlord and Tenant Act, 1954, the respondents did not challenge the applicants' right to a new tenancy but objected to the continuance of the advertising signs and contended that the court had no jurisdiction to include a clause such as cl. 7 in a new lease ordered to be granted under s. 29 of the Act; alternatively, that if there were such jurisdiction it was not a case in which it should be exercised.

UPJOHN, J., said that the right under cl. 7 of the original lease to exhibit the signs could not be described as part of the demised premises or as part of the holding. The right was not a term which touched or concerned the land demised but was a pure licence which had no relevant connection with the actual property demised. Under s. 32 (3) of the Act of 1954 the rights enjoyed by the tenant in connection with the holding must be included in any tenancy granted under s. 29. Section 32, unlike s. 35, gave the court no discretion in the matter. Although it was unnecessary to come to a final conclusion on the matter, in his lordship's judgment, s. 32 was dealing with matters connected with the holding. Coming to s. 35, which dealt, as the side-note said, with other terms of the tenancy, it was a question of judicial discretion. That section went much further than s. 32 and his lordship did not think that Parliament had there contemplated that there should be an elaborate dissection of the terms contained in the tenancy as between those which touched and concerned the land and those which did not. Under that section the court was entitled to, and had to, have regard not only to the terms of the current tenancy but to all relevant circumstances. His lordship had come to the conclusion that he had the widest possible discretion in looking at all the terms of the current tenancy agreement and in considering all relevant circumstances, and that, therefore, he had jurisdiction to make an order for a new lease which contained some clause on the lines of cl. 7. On the evidence the exhibition of the signs had no adverse effect on the letting of the property and the continued existence of the right to exhibit them would not do any harm to the respondents. He proposed to exercise his jurisdiction to grant that right during the currency of the lease he would order, and the new lease would contain cl. 7. Order accordingly.

APPEARANCES: *Sir Lionel Heald*, Q.C., and *J. T. Plume* (*Bird & Bird*); *R. E. Megarry*, Q.C., and *R. W. Vick* (*Stuart Hunt & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 171**

Queen's Bench Division

ARBITRATION AWARD: ACTION TO ENFORCE: COUNTER-CLAIM TO SET ASIDE

Birtley District Co-operative Society, Ltd. _v._ Windy Nook and District Industrial Co-operative Society

Streatfeild, J. 4th November, 1958

Action.

The plaintiffs claimed against the defendants a declaration that an award made as a result of an arbitration between them was binding on the defendants. At the trial of the action, the defendants sought leave to plead by way of counter-claim that the award be set aside on the ground of alleged misconduct by the arbitrators.

STREATFEILD, J., said that by the counter-claim so called, although in his view it was virtually a defence to the action, the defendants sought to set aside the award of the arbitrators on the ground of alleged misconduct. It was quite clear from *Scrimaglio* v. *Thornett & Fehr* (1924), 131 L.T. 174, which was binding on his lordship, that misconduct of the arbitrator could not be pleaded as a defence to an action to enforce the award. It had also been said in *Pedler* v. *Hardy* (1902), 18 T.L.R. 591, that it was very doubtful whether it could be pleaded by way of counter-claim. His lordship would have thought it was *a fortiori* because there was no such thing as an action commenced by writ to set aside an award for misconduct of the arbitrator. The Arbitration Act, 1950, and the Rules of the Supreme Court laid down the procedure that it was on motion to the High Court and not by action and if there could not be a substantive claim in action to set aside an award for misconduct, when one bore in mind that a counter-claim was a substantive claim, it seemed even stronger that there could not be a counter-claim on that ground and for that reason his lordship came to the conclusion that it would be wrong to grant leave to enter the counter-claim.

APPEARANCES: *Sir Frank Soskice*, Q.C., and *R. A. MacCrindle* (*Herbert Reeves & Co.*, for *William Mark Pybus & Sons*, Newcastle-upon-Tyne); *Gerald Gardiner*, Q.C., and *C. F. Dehn* (*Sharpe, Pritchard & Co.*, for *Watson, Burton, Booth & Robinson*, Newcastle-upon-Tyne).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 142**

CONTRACT: FRUSTRATION: CLOSURE OF SUEZ CANAL

Tsakiroglou & Co., Ltd. _v._ Noblee Thorl G.m.b.H.

Diplock, J. 9th December, 1958

Special case stated by Board of Appeal of the Incorporated Oil Seed Association.

By a written contract, dated 4th October, 1956, sellers agreed to sell to buyers Sudanese groundnuts for shipment c.i.f. Hamburg during November/December, 1956. On 7th October the sellers booked space in one of four vessels scheduled to call at Port Sudan in November and December, 1956. At the date of the contract the usual and normal route for shipment of Sudanese groundnuts from Port Sudan to Hamburg was *via* the Suez Canal. On 2nd November, the Suez Canal was closed to navigation, but the goods could have been shipped round the Cape of Good Hope. The sellers failed to ship the goods, and in arbitration proceedings, the umpire held that the sellers were in default and the Appeal Board in upholding the umpire's award found in para. 12 (vi) that performance of the contract by shipping the goods on a vessel routed *via* the Cape of Good Hope was not commercially or fundamentally different from its being performed by shipping the goods on a vessel routed *via* the Suez Canal. The sellers appealed.

DIPLOCK, J., said that the findings of fact in the present case were substantially the same as those in *Carapanyoti & Co., Ltd.* v. *E. T. Green, Ltd.* [1958] 3 W.L.R. 390; 102 SOL. J. 620, except that the finding in para. 12 (vi) was not present in *Green's* case. The crucial question was whether that finding made the present case distinguishable from *Green's* case. *Green's* case was one of the very few cases where trade arbitrators had found a contract not to be frustrated and the court had found that it was. His lordship would be very reluctant to come to a different conclusion of law from that reached by McNair, J., if he thought that the facts were indistinguishable, but the Appeal Board's finding in para. 12 (vi) seemed to be a vital difference. Of course, it only made a vital difference if it was, or included, a finding of fact and was not a mere finding of law. His lordship held that it was a finding of fact, and if it were unassailable then it followed that the contract was not frustrated. His lordship could see no ground on which he could set aside or ignore that finding, which he regarded as a conclusion of fact. His lordship thought that its presence in the case constituted a crucial difference between the facts of the present case and those of *Green's* case and held that the Appeal Board was right in law in deciding that the contract was not frustrated by the closing of the Suez Canal.

APPEARANCES: *Eustace Roskill*, Q.C., and *R. A. MacCrindle* (*Richards, Butler & Co.*); *J. Megaw*, Q.C., and *J. F. Donaldson* (*Bernard Samuel Berrick & Co.*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[2 W.L.R. 179**

ADOPTION: INFANT FEMALE: DUTY OF JUSTICES

R. *v.* Liverpool Justices; *ex parte* W

Lord Parker, C.J., Donovan and Ashworth, JJ.

16th January, 1959

Application for an order of certiorari.

A woman gave birth to an illegitimate female child, and when the child was nearly five years old the mother went to live with a man, Leigh, whom she later married. Five months after this she died. Leigh applied to the justices for an adoption order in respect of the child. In accordance with the Adoption of Children (Summary Jurisdiction) Rules, 1949, the local authority was appointed guardian *ad litem* and a child care officer of the authority made the necessary investigation and report to the justices. The officer knew that the child's grandmother wanted custody of the child and that she had consulted a solicitor for this purpose, but made no mention of these matters in his report. No notice of Leigh's application was served on the grandmother, and the application was heard in her absence by the justices, who made an adoption order in favour of Leigh. The grandmother moved for certiorari to quash the order on the grounds, *inter alia*, that the guardian *ad litem* failed to make a full investigation, and that the justices failed to have proper regard to s. 2 (2) of the Adoption Act, 1950.

LORD PARKER, C.J., said that, having regard to the fact that the adoption order did not refer to any "special circumstances" justifying the making of the order, the court was bound to infer that the justices omitted altogether to consider the provisions of s. 2 (2) of the Act. In fairness to them, they had followed meticulously the order prescribed by Sched. I to the Rules of 1949, but the fact remained that there was no suggestion from beginning to end that they ever considered the provisions of subs. (2). There might well be a second ground on which an order of certiorari would lie, in that the procedure whereby the guardian *ad litem* was to make a full report to the court of the circumstances of the case was not followed. The report that was put in was not in any sense a full report, bearing in mind that this was a case under s. 2 (2); and if a full report had been put in the justices might well have considered that pursuant to the amended rule 9 of the Rules of 1949 they ought to have the application served on the grandmother.

DONOVAN and ASHWORTH, JJ., agreed. Application allowed.

APPEARANCES: *J. R. Bickford Smith* (*Helder Roberts & Co.* for *John A. Behn, Twyford & Reece*, Liverpool); *Glyn Burrell* (*Town Clerk*, Liverpool).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 149**

Probate, Divorce and Admiralty Division

DIVORCE: FOREIGN DECREE

Mountbatten *v.* Mountbatten

Davies, J. 11th December, 1958

Undefended petition by husband for a declaration that his marriage had been validly dissolved by a Mexican decree of divorce on 22nd May, 1954. Proceedings upon a prayer in the alternative for a decree of divorce on the ground of desertion were stayed pending the hearing of the prayer for a declaration.

The husband and wife were married in 1950 in the United States of America, and they lived together in New York City. The husband retained throughout his English domicile of origin. In December, 1952, he returned to England, and he alleged that the wife refused to follow him. Shortly before he left he was served with a summons in the Supreme Court of New York issued on behalf of the wife, who there instituted an action for divorce or alternatively separation. Interlocutory orders were made in that action; but proceedings for divorce were later instituted in the State of Chihuahua, Mexico, by the wife after negotiations to that end between the parties through their lawyers. On 21st May, 1954, the wife filed a petition for divorce in the Mexican court, alleging incompatibility of temperament, and a decree of dissolution was pronounced the following day. The wife was present at the hearing at which the husband was represented. The New York action was discontinued by consent on 7th June, 1954. The jurisdiction of the Mexican court was based on two grounds: (*a*) that the wife was resident within that jurisdiction, her physical presence at the moment of the granting of a certificate to that effect being sufficient, and (*b*) that both parties had expressly submitted to the jurisdiction. Either ground would have been of itself sufficient. Expert evidence was accepted that the decree of the Mexican court would be recognised without question in the State of New York, even though divorce proceedings were pending there at the time; and as a result of that decree the wife thereafter would unquestionably be held in that State to be a single woman. Apart from her brief visit to Mexico, the wife was ordinarily resident in the State of New York from the marriage in 1950 to the date of the present proceedings. The husband prayed the court for a declaration that his marriage had been validly dissolved by the Mexican decree, the basis of his submission being as follows: (*a*) the New York court was the court of the residence of the wife and she had been more than three years ordinarily resident within its jurisdiction; (*b*) the New York Court would recognise the Mexican decree; (*c*) the English court would under *Armitage* v. *A.-G.* [1906] P. 135 recognise the validity of a decree pronounced *alibi* if such a decree was recognised as valid by the court of the domicile; (*d*) as a result of recent decisions the English courts may now recognise foreign decrees pronounced at the suit of a wife if the wife at the time of the presentation of her petition had been three years ordinarily resident within the jurisdiction of the court which pronounced the decree; (*e*) the court should therefore recognise the Mexican decree by an extension of the principle in *Armitage* v. *A.-G.*, *supra*, since it was recognised by the court within whose jurisdiction the wife had resided for three years and whose competence to dissolve the marriage would now be recognised. The assistance and argument of the Queen's Proctor was invoked. *Cur. adv. vult.*

DAVIES, J., reading his reserved judgment, said that had the wife been ordinarily resident in the State of New York for three years prior to the institution there of proceedings for divorce, and had a decree been pronounced in those proceedings, the court would recognise that decree although the jurisdictional test in New York was one year's residence only. But the court would not recognise decrees which were not recognised by the court of the domicile except decrees pronounced by the court in the exercise of its own statutory jurisdiction and similar legislation and decrees pronounced by foreign courts in strictly analogous circumstances, as in *Travers* v. *Holley* [1953] P. 246 and cases following that decision. The principle of the law that jurisdiction in divorce depends on domicile was otherwise still paramount; and from the terms of the statutory exceptions it would appear that Parliament expressly recognised that test of jurisdiction. His lordship said that the Mexican decree was accordingly invalid, for it was not one which would be given direct recognition by the court of the domicile, and it would be a wholly illegitimate extension of the principle of comity, upon which *Travers* v. *Holley*, *supra*, and the subsequent cases turned, to hold that this decree should be recognised owing to the interposition of a residential qualification of the wife in a third State.

APPEARANCES: *R. J. A. Temple*, Q.C.,* and *Colin Duncan* (*Theodore Goddard & Co.*); *Roger Ormrod*, Q.C., and *A. T. Hoolahan* (*The Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 128**

* Mr. Temple was not the leading counsel advising the husband at the time of the Mexican divorce and was only instructed on his behalf much later.

THE UNITED LAW DEBATING SOCIETY announce the following meetings to be held in Gray's Inn Common Room during February at 7.15 p.m.: Monday, 9th February—Debate: "This House notes with concern the continuous waste of energy and money spent on space travel." Monday, 16th February—Debate: "In the opinion of this House the jury system is obsolete and should be abolished." Monday, 23rd February—Debate: "In the opinion of this House the United Nations Organisation should be dissolved forthwith." It is intended to hold a moot in March at which it is hoped that the Hon. Mr. Justice McNair will preside.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Family Allowances and National Insurance Bill [H.C.] [27th January.

Read Second Time:—

Calvinistic Methodist or Presbyterian Church of Wales (Amendment) Bill [H.L.] [27th January.
City of London (Various Powers) Bill [H.L.] [28th January.
Emergency Laws (Repeal) Bill [H.C.] [27th January.
Falmouth Docks Bill [H.L.] [29th January.
Highways Bill [H.L.] [27th January.
Joseph Rowntree Memorial Trust Bill [H.L.] [28th January.
London County Council (General Powers) Bill [H.L.] [29th January.
Railway Clearing System Superannuation Fund Bill [H.L.] [27th January.
Rights of Light Bill [H.L.] [29th January.
Round Oak Steel Works (Level Crossings) Bill [H.L.] [29th January.
Royal Wanstead School Bill [H.L.] [27th January.
Tees Conservancy Bill [H.L.] [28th January.
Thames Conservancy Bill [H.L.] [27th January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Eisteddfod Bill [H.C.] [23rd January.
European Monetary Agreement Bill [H.C.] [28th January.
Mental Health Bill [H.C.] [26th January.
National Insurance Bill [H.C.] [27th January.
Obscene Publications Bill [H.C.] [23rd January.
Street Offences Bill [H.C.] [29th January.

B. QUESTIONS

DOCUMENTS (CROWN PRIVILEGE)

The ATTORNEY-GENERAL declined to appoint an *ad hoc* committee of Ministers and High Court judges to make recommendations on the law and practice as to Crown privilege of documents. In *Auten* v. *Rayner* the Home Secretary had objected in the public interest to the production of reports made by a police officer to his superiors and communications between police forces in connection with an investigation into an alleged crime. The enforcement of the criminal law would be seriously impeded if the production of such documents could be compelled. The objection had been challenged by the plaintiff on a number of grounds, all of which had been rejected by the Court of Appeal in a considered judgment which had expressed no dissatisfaction with the existing law and practice. [27th January.

LEGAL AID (ASSESSMENT OF CONTRIBUTIONS)

The ATTORNEY-GENERAL repeated his recent assurance that once the introduction of ss. 5 and 7 of the Legal Aid and Advice Act had been effected the Lord Chancellor would see what could be done about the financial provisions governing the rate of contribution of a person seeking legal aid. [27th January.

GROUND RENTS (APPORTIONMENT)

Mr. DARLING asked the Attorney-General whether he would consider the legal consequences arising when the ground rents of divided leasehold estates of dwelling-houses were not equitably apportioned among the buyers of the houses and the whole rent of the estate was, without warning or explanation, charged to an individual house-owner; and if he would take steps to bring to an end a legal custom which was causing hardship to house-owners in some districts.

The ATTORNEY-GENERAL said that presumably the reference was to the apportionment of ground rents without the landlord's consent. He was not aware that hardship was being caused by any custom having the force of law. A person buying a house in the circumstances described ought normally to receive a warning and know the liabilities he was incurring. Every person to whom land was apportioned was in law responsible for the ground rent, but he understood that in practice in some parts it was not a custom having the force of law. The person who held the last bit of that land was looked to by the ground lessor for the ground rent for which he was liable in law. If he made the apportionment with the other occupants of that land without the landlord's consent and agreement, he had not much to complain about. [27th January.

HOMOSEXUAL OFFENCES

The HOME SECRETARY said that he did not propose at present to introduce legislation to implement the Wolfenden Committee's recommendation that, except for indecent assaults, the prosecution of any homosexual offence more than twelve months old should be barred by statute, but he had no doubt that chief constables had taken note of it. [29th January.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment No. 1), 1959. (S.I. 1959 No. 118 (S. 1).) 5d.

Bexhill Water (Charges) Order, 1959. (S.I. 1959 No. 98.) 4d.

Carlisle–Sunderland Trunk Road (Chapel House to Newcastle City Boundary) Order, 1959. (S.I. 1959 No. 76.) 5d.

Copyright Act, 1956 (Transitional Extension) Order, 1959. (S.I. 1959 No. 103.) 5d.

East Ham (Repeal of Local Enactment) Order, 1958. (S.I. 1959 No. 127.) 5d.

East Shropshire Water Board (Chetwynd Parish) Order, 1959. (S.I. 1959 No. 137.) 5d.

Fishguard – Aberystwyth – Dolgelley – Caernarvon – Bangor (Menai Suspension Bridge) Trunk Road (Gellilydan, near Maentwrog, Diversion) Order, 1959. (S.I. 1959 No. 123.) 5d.

Foreign Compensation (Hungary) (Amendment) Order, 1959. (S.I. 1959 No. 106.) 5d.

Forestry (Exceptions from Restriction of Felling) (Amendment) Regulations, 1959. (S.I. 1959 No. 96.) 5d.

Gloucester Water Order, 1959. (S.I. 1959 No. 95.) 5d.

Northern Rhodesia (Legislative Council) Order in Council, 1959. (S.I. 1959 No. 105.) 11d.

Oldham Water Order, 1959. (S.I. 1959 No. 121.) 7d.

Somaliland (Constitution) Order in Council, 1959. (S.I. 1959 No. 104.) 7d.

Stopping up of Highways (City and County Borough of Bath) (No. 1) Order, 1959. (S.I. 1959 No. 109.) 5d.
Stopping up of Highways (County of Buckingham) (No. 1) Order, 1959. (S.I. 1959 No. 110.) 5d.
Stopping up of Highways (County of Derby) (No. 2) Order, 1959. (S.I. 1959 No. 108.) 5d.
Stopping up of Highways (City and County of Kingston-upon-Hull) (No. 1) Order, 1959. (S.I. 1959 No. 77.) 5d.
Stopping up of Highways (County of Lancaster) (No. 1) Order, 1959. (S.I. 1959 No. 126.) 5d.
Stopping up of Highways (County of Leicester) (No. 1) Order, 1959. (S.I. 1959 No. 111.) 5d.
Stopping up of Highways (London) (No. 1) Order, 1959. (S.I. 1959 No. 91.) 5d.
Stopping up of Highways (London) (No. 4) Order, 1959. (S.I. 1959 No. 92.) 5d.
Stopping up of Highways (London) (No. 7) Order, 1959. (S.I. 1959 No. 112.) 5d.
Stopping up of Highways (City and County Borough of Manchester) (No. 1) Order, 1959. (S.I. 1959 No. 113.) 5d.
Stopping up of Highways (County Borough of Northampton) (No. 1) Order, 1959. (S.I. 1959 No. 93.) 5d.
Stopping up of Highways (County of Nottingham) (No. 1) Order, 1959. (S.I. 1959 No. 114.) 5d.
Stopping up of Highways (City and County Borough of Sheffield) (No. 1) Order, 1959. (S.I. 1959 No. 78.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 3) Order, 1959. (S.I. 1959 No. 79.) 5d.

Stopping up of Highways (County of Suffolk, East) (No. 3) Order, 1959. (S.I. 1959 No. 115.) 5d.

Stopping up of Highways (County of Surrey) (No. 1) Order, 1959. (S.I. 1959 No. 94.) 5d.

Superannuation (Service in Certain Places Abroad) (Amendment) Order, 1959. (S.I. 1959 No. 136.) 4d.

Tees Valley and Cleveland Water (Broken Scar) (Variation) Order, 1959. (S.I. 1959 No. 97.) 4d.

Winchester (Amendment of Local Enactment) Order, 1958. S.I. 1959 No. 128.) 5d.

REVIEWS

The Law and Practice of Registered Conveyancing. By Sir GEORGE H. CURTIS, C.B., of Gray's Inn, Barrister-at-Law, Chief Land Registrar of H.M. Land Registry, and THEODORE B. F. RUOFF, Solicitor, Senior Registrar of H.M. Land Registry. 1958. London: Stevens & Sons, Ltd. £6 6s. net.

This will undoubtedly become a standard reference book and it is likely that many editions will be published. The subject-matter is already important to a high proportion of practising solicitors, and if extension of the areas of compulsory registration continues with the growing momentum that has recently emerged, it will not be long before almost all will need a sound knowledge of the subject.

The volume is large and quite expensive. The preface and the tables of contents, cases, statutes and statutory instruments together occupy 60 pages. The text, which is in conventional form with footnotes, consists of 899 pages and this is followed by copies of the Land Registration Acts (83 pages), of the Land Registration Rules and other relevant statutory instruments (123 pages) and by a good index (78 pages). The statutes and statutory instruments are not annotated in any way but the footnotes to the main text of the book refer the reader to the Acts or Orders which provide authority for the propositions in the text. Almost all of the users of this book already have available the relevant Acts and most can refer quickly and easily at least to the Land Registration Rules if not to the other instruments. Consequently, it is doubtful whether the increase in the size of the volume (and, presumably, in its cost) which is due to the printing of this material is justified by the greater facility for reference to sources.

A fair appraisal of this book cannot be made in narrow terms. The authors are public officers who are convinced of the value of their work and so it is not surprising to find that their assertions are occasionally provocative. Whether or not the reader agrees with their comments he will acknowledge that in the main their assessments are balanced. Nevertheless, in their anxiety to prove the advantages of registered titles the authors seem inclined to underrate the limitations of registration. For example, they take care to justify (at p. 84) the subjection of title to overriding interests by pointing out that they "are matters which can exist in unregistered conveyancing even though their existence is neither known nor suspected in a particular instance." This statement is correct but is it not also to be noted that in the most common categories of adverse interests the vast majority of examples are in practice revealed during investigation of title? The authors state that under the Torrens system of registration, which is used in many parts of the Commonwealth, titles are simpler than English registered titles but that "this characteristic is gained by depriving the landowner of many important dispositionary powers" (p. 12). Is it not equally true to say that much of the simplicity of English registered titles is gained by leaving rights not capable of clear classification and definition to be dealt with by the methods of unregistered conveyancing? Thus, "the necessity of a proprietor having to satisfy the Chief Land Registrar as to the effectualness of [a licence to assign a lease]" mentioned at p. 16, is avoided by leaving the burden on the purchaser of the leasehold interest. The remark, quoted above, about depriving a landowner of dispositionary powers is followed by the question: "But even so, what English solicitor would not like to see the abolition, for example, of the futilities of modern restrictive covenants?" If this means, as the context implies, that the authors wish to see an end to the imposition and enforcement of restrictive covenants there is at least one English solicitor who firmly disagrees with them. There are some futile rules regarding the enforcement of covenants but even with present defects (many of which could easily be remedied) our equitable rules as to restrictive covenants provide adequately for the protection of many legitimate interests. There is no ground for arguing that they should cease to be enforceable because they do not fit neatly into the pattern of registered titles. Similarly, in their justification of the general boundaries rule the authors appear to underestimate the number of cases in which boundaries are defined with accuracy in unregistered conveyancing (even though, under certain standard conditions of sale, a vendor is not obliged to define them with certainty).

As the authors do all they can to vindicate the superiority of the system they favour, a reviewer feels justified in drawing attention to arguments which tend the other way in order that a balanced view may emerge. On the other hand it would be quite wrong to give the impression that this book is intended to be controversial. In fact it is a temperate, accurate and authoritative account of the mechanics of land registration and of the manner in which conveyancing transactions affecting registered land are carried out. The preface states that, other than the out-dated Brickdale and Stewart-Wallace, "no authoritative text-book has been available to practitioners and students which explains in detail the law under the Land Registration Acts and Rules and its application to the real problems of daily practice." The book by Dr. Potter, most recently published as the third volume of the 15th edition of Key and Elphinstone's Precedents in Conveyancing, had some defects. Wontner's Guide to Land Registry Practice is a smaller book covering a narrow field (although the latest edition is a useful practical guide) and so the need for a new reference book is proved.

The relationship of the law and practice of registered conveyancing to land law (which, for this purpose, is a better term than "real property") and to the law and practice of conveyancing affecting unregistered titles is not easy to specify. Registration of title can exist only following the enactment of rules governing the contents of the register, land and charge certificates, plans, classes of titles, minor interests, compulsory registration, and other matters. So, in the first place, it is essential for the practitioner to know the main provisions, and to have help with details and problems affecting what can best be described as the machinery of registration (in addition to a basic knowledge of land law). Similarly even if a solicitor never dealt with an unregistered title he would still require to refer to a text-book on conveyancing (as it is customarily described) in addition to the book under review. Although there is a very good chapter on procedure on the sale of registered land, its thirty-seven pages can explain adequately only those rules which are peculiar to registered titles. Understandably the authors do not purport to describe preliminary inquiries (the entry of these words in the index refers the reader to pages dealing with requisitions on title), the main rules as to contracts, remedies of parties, the effect of misrepresentation or mistake, the date of and arrangements for completion, the liability for interest, apportionment of outgoings, and other everyday problems. Similarly, although there is a chapter explaining the rules as to the persons capable of being registered as proprietors, the basic law as to the capacity of parties to conveyancing transactions is not otherwise dealt with. The section dealing with requisitions is headed "Requisitions on title are unnecessary"; although as regards most transactions this wording could be justified, it does not take account of the common practice of making comparable inquiries as to tenancies, planning matters and other points not strictly matters of title.

The fact that this book has caused the reviewer to write as much about the subject as about the authors' treatment of it, indicates the value of the publication and its timeliness. The authors are to be congratulated on their successful production of a necessary reference book. Readers will find that it meets

their needs for a specialist book on registered conveyancing although it does not render obsolete, or even obsolescent, any existing book on either real property or conveyancing.

Paterson's Licensing Acts. Sixty-seventh Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. 1959. London: Butterworth & Co. (Publishers), Ltd. £3 10s. net.

The editor of this new edition of Paterson states that there have been few cases on licensing law in 1958 and, so far as the practitioner is concerned, the changes in the general law since the last edition are almost negligible. For the specialist, however, there are changes in excise duties and new sets of conditions for cinema, theatre and music licences have been included.

Paterson is a book containing more than 1,700 pages and to a young solicitor or clerk dealing with his first licensing application it may seem a formidable work in which to seek out all that he needs to know. To help such persons, the law and its requirements are concisely set out in textual form in the chapters at the start of the book. We suggest to the author that in chap. VIII (Notices) there be included a reference to s. 29 of the Licensing Act, 1953 (Power on application for licence to dispense with preliminary requirements) and to the cases on p. 1072 as to what are and what are not material defects in notices. Section 29, in particular, is scarcely referred to apart from the page where it is printed and may well be overlooked by a user of the book. As it contains provisions which can be of vital importance to an applicant, it deserves to be mentioned more frequently.

The Evolution of the Judicial Process. The W. M. Martin Lecture, 1956. By the Hon. JAMES C. MCRUER, Chief Justice of the High Court of Justice for Ontario. 1958. Toronto: Clarke, Irwin & Co., Ltd. Agents in U.K.: Sweet & Maxwell, Ltd. £1 5s. net.

This slim book contains a series of three lectures. They were the first to be delivered under the auspices of the Law Society of Saskatchewan as the W. M. Martin Lectures, a foundation honouring the name of the Chief Justice of the Province and designed to advance legal studies in the University of Saskatchewan and to perpetuate the rule of law in Canada. Despite this combination of the professional and the academic in its provenance, the book is stated by the publishers to be intended for the general reader; nor can its cool exposition of the growth and present condition of the processes of the courts in several different countries of importance fail to appeal to the layman who wishes to be well informed.

Nevertheless, it is as the scholarly work of a practical lawyer that Chief Justice McRuer's lectures most deeply impress. Writers on a legal system tend to pillory or to praise, with little discrimination in either case. The first two lectures in this book, tracing the history and sketching the contemporary scene, are as balanced and as objective as one could wish. In the third, entitled "International Judicial Process," the author avoids with equal success any partisan tendency. Yet through it there shines his convinced optimism, and his belief in the efficacy, as instruments of the rule of law, of the international institutions which he describes.

BOOKS RECEIVED

Nuclear Weapons and International Law. By NAGENDRA SINGH, M.A., LL.M. (Cantab.), M.A., B.Litt., LL.B. (Trinity College, Dublin), D. Phil. (Cal.), D. Litt. (Bihar), I.C.S., Barrister-at-Law. pp. xix and (with Index) 267. Published under the auspices of the Indian Council of World Affairs, New Delhi. 1959. London: Stevens & Sons, Ltd.

Advanced Cost Accountancy. By J. E. SMITH, A.C.W.A., and J. C. W. DAY, B.Com. (Lond.), F.A.C.C.A. pp. 170. 1959. London: Gee & Co. (Publishers), Ltd. £1 1s. net.

The Law and Practice of Divorce and Matrimonial Causes including proceedings in Magistrates' Courts. Fourth Edition. Second Supplement. By D. TOLSTOY, of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. pp. vii and 39. 1958. London: Sweet & Maxwell, Ltd. 5s. net.

Archbold. Pleading, Evidence and Practice in Criminal Cases. Thirty-fourth Edition. By T. R. FITZWALTER BUTLER, of the Inner Temple and Midland Circuit, Barrister-at-Law, Recorder of Newark, and MARSTON GARSIA, of the Middle Temple and South Eastern Circuit, Barrister-at-Law. pp. cxcvi and (with Index) 1719. 1959. London: Sweet & Maxwell, Ltd. £5 5s. net.

Small Town D.A. By ROBERT TRAVER. pp. 253. 1959. London: Faber & Faber, Ltd. 15s. net.

Principles of Local Government Law. By C. A. CROSS, M.A., LL.B., of Gray's Inn, Barrister-at-Law. pp. xl and (with Index) 482. 1959. London: Sweet & Maxwell, Ltd. £1 15s. net.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Building Licensing—LAPSE OF PRICE CONTROL

Q. Has the period during which it was an offence to let or sell a house at a rent or price beyond the maximum stated in a building licence in respect of which the Building Materials and Housing Act, 1945, s. 7 (1), applied, and which was extended by the Housing Act, 1949, s. 43 (1), to 20th December, 1953, been further extended or may the premises now be sold at a greater price than that referred to in the building licence?

A. The provisions of the 1945 Act referred to have been allowed to expire on 20th December, 1953, and the conditions as to price, etc., are now no longer enforceable. The entry in the local land charges register should have (and no doubt has) been deleted.

Dangerous Building—NOTICE TO OWNER UNDER TOWNS IMPROVEMENT CLAUSES ACT, 1847

Q. The Blackacre U.D.C. wish to take steps under s. 75 of the Towns Improvement Clauses Act, 1847. There is a building in their area which is dangerous and which they have fenced off under the provisions of the section, which then provides "and shall cause notice in writing to be given to the owner of such building . . . if he be known and resident *within the said limits*." The owner is known but he is resident in the town of Whiteacre. Can the Blackacre Council proceed to serve him with notice and upon default to make complaint before the justices notwithstanding that the owner is not resident "within the said limits"?

A. All that the surveyor to the council (*not* the council themselves) must do is to put a notice on the door or other conspicuous part of the premises; as the owner is not resident within the council's area, no notice need be served on him. If the surveyor does in fact serve the owner with a notice, we do not consider this will prevent him from making a complaint after three days in default as provided for in the section.

Sale of Land Held in Undivided Shares Vested in Public Trustee

Q. In April, 1904, *A* and *B* purchased certain properties which were assigned to them as tenants in common. *A* died in May, 1912, having by his will appointed one executor (who has since

died) and having by his will created a life interest in his estate in favour of his wife, who has also since died. *B* died in April, 1946, having appointed a sole executrix of his will and having bequeathed his real and personal estate equally between two persons. In view of the life interest created by the will of *A*, and the provisions of the Law of Property Act, 1925, it does not seem that the executrix of *B* is in a position to sell the property but that special trustees should be appointed for this purpose.

A. From the facts it seems clear that, on 1st January, 1925, the property fell within the scope of the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (4), i.e., it vested in the Public Trustee. The Public Trustee can be replaced by trustees appointed by persons together interested in more than one-half of the property. For a precedent see, e.g., Key and Elphinstone's Precedents in Conveyancing, 15th ed., vol. 1, p. 738.

Change of Child's Name

Q. Eric is married to Vera, who, prior to her marriage to Eric, had an illegitimate child named Katherine, now aged six years. Eric and Vera now wish to change Katherine's present surname, which is her mother's maiden surname, to Eric's surname. Can this be done by deed poll, please, or if not what method is suggested ?

A. Deed poll is not really a method of changing a name, but a convenient means whereby a record may be made available of a change effected by reputation. If the child henceforth uses her mother's present married surname and it is used of her so that she becomes known by it, the change will be complete and effective in fact, and there is nothing in law to prevent this process, in the case of a British subject at all events (cf. *Dancer* v. *Dancer* [1949] P. 147). If a deed poll is desired it is possible for the mother to execute it on the infant's behalf, using her own name and following the form set out at p. 24 of Oyez Practice Notes No. 1, " Change of Name," 5th ed. Such a deed may be enrolled in the Filing Department of the Central Office of the Supreme Court pursuant to reg. 8 of the Enrolment of Deeds (Change of Name) Regulations, 1949 (S.I. 1949 No. 316), as amended by the Enrolment of Deeds (Change of Name) (Amendment) Regulations, 1951 (S.I. 1951 No. 377), the application being made by the mother as parent and legal guardian of the infant. Enrolment is not, however, essential to the validity of the deed ; it secures notoriety and renders it possible to obtain office copies for use as evidence if required.

Contract for Sale—Condition as to " Satisfactory " Sale of Purchaser's Property—Whether Binding Contract

Q. *P* agrees in writing to buy Blackacre for £2,000 from *V* on a specified date " subject to the satisfactory sale of his (*P's*) property Whiteacre " and " subject to his obtaining a mortgage of £*x*." Is there a binding contract between *V* and *P* or is it void for uncertainty ? Would your answer be the same if there were only the condition regarding the mortgage ?

A. In our opinion there is no binding contract between *V* and *P*, because of the provision that it is to be subject not only to a sale of Whiteacre, but also to that sale being " satisfactory." There is no suggestion to whom it must be satisfactory, nor what criteria are to be applied in considering whether it is satisfactory. There are some vendors who might be satisfied by receiving what they paid for the property ; there are others of whom it might almost be said that they could never be satisfied. If there were only the condition regarding the mortgage, we cannot see that there is any such uncertainty as is imported by the condition that the sale must be satisfactory.

Stamp Duty—Previous Conveyance Possibly at Undervalue

Q. We are acting for *A*, who has contracted to purchase a large, early Victorian town house, in a poor state of repair, for £2,100. On receiving the abstract of title, we find that the property was sold by a brother to his sister in December, 1951, for £500, the conveyance being stamped £2 10s. and produced. In view of the discrepancy in price, for which no explanation has been given, it seems that there must have been an element of gift in the conveyance of 1951, so that the stamp duty should then have been adjudicated, but the vendor's solicitors inform us, in answer to a requisition, that it is within their own knowledge that this was a genuine sale at the price indicated. Both Sergeant on Stamp Duties and Williams on Title, in their notes on *Re Weir & Pitts Contract* (1911), 55 Sol. J. 536, seem to indicate that *A* will run no risk in accepting the position, without further inquiry, but the difference in figures is considerable.

A. We agree that this is a difficult point where there is a large disparity in the price. Nevertheless, the market value of large, Victorian town houses in a poor state of repair is a matter upon which opinions may differ widely. In view of this and in view of the fact that Alpe on Stamp Duties, 24th ed., pp. 62, 190, and Monroe on Stamp Duties, 2nd ed., pp. 48, 100, also take the view that the purchaser may safely accept the position we think that you will be in order in following that unanimous expression of opinion.

Land Tax Redemption—Liability on Sale

Q. Clients of mine contracted to sell property in October, 1955, and completion took place on 21st December, 1955. Land tax was payable in respect of the property and due apportionment made on completion. I have now had a communication from the Land Tax Redemption Officer that this assessment of £1 7s. 7d. should be redeemed. The original owners who sold the property were a father, mother and two sons. No notice of liability to redemption was given and presumably the vendors are liable for the redemption money. If this redemption money is paid, have the vendors any right to recompense against the purchasers for the amount of redemption money ?

A. By the Finance Act, 1948, s. 40 (2), the redemption money is payable by the person who, immediately *after* the property becomes liable to redemption, is the estate owner in respect of the relevant interest. That person is the purchaser, and the vendors are not concerned, unless, as would be most unusual, they expressly covenanted to indemnify the purchaser.

Stamp Duty—Leaving Deed Undated at Time of Execution

Q. We act for a client who desires to take a charge on a holding of shares in a private company, and it has been suggested that the security be in the form of a declaration of trust which would appear to attract stamp duty of 5s. per cent. Our client is anxious, having regard to the sum involved, not to incur the expense of the stamp duty, and it has been suggested that the document could be executed by the borrower and left undated so that stamp duty will not be paid at the present time. If the debt were not to be paid in due course, then our client would date the deed and pay the stamp duty upon it, but we feel that to prepare a deed with the intention of leaving it unstamped for the time being might be a deliberate evasion of the Stamp Act, to which we could not properly be a party.

A. We agree that the suggested course would not be a proper one. We understand that the deed would be executed but not dated at the time of execution. Section 5 of the Stamp Act, 1891, requires all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty, to be fully and truly set forth in the instrument. And by the same section a penalty is imposed on any person who, with intent to defraud the Revenue, executes an instrument in which all the said facts and circumstances are not fully and truly set forth, or who, being employed or concerned in or about the preparation of an instrument, neglects or omits fully and truly to set them forth therein. The proposed procedure would appear to us to fall foul of this section. Section 15 also imposes a penalty for failure to stamp within thirty days of execution of the instrument.

Legal Mortgage of Leasehold Interest—Mortgage Dated Earlier than Date in Lease

Q. If the term of a lease is expressed to commence upon a date earlier than the date in the lease will a legal mortgage executed by the lessee and dated on the day on which the term is expressed to commence create a full and sufficient charge on the lessee's interests for the mortgagee's security ?

A. The grant of a legal mortgage of a leasehold interest is in fact the grant of a sub-term carved out of the mortgagor's own term of years. If the mortgagor purports to grant such a sub-term when he has not himself acquired any interest in the land such attempt must in the first place be ineffectual, but if the mortgagor subsequently acquires such a term of years (as will be the case here) then we think that acquisition of a legal estate will feed the estoppel as between himself and the mortgagee, so that the mortgage will become valid.

NOTES AND NEWS

Personal Notes

Mr. John Hirst, O.B.E., solicitor and clerk to the Trent River Board, retired on 31st January.

Miscellaneous

PLANT AND MACHINERY TO BE RATEABLE: COMMITTEE'S RECOMMENDATIONS

The Report of the Committee on the Rating of Plant and Machinery, appointed by the Minister of Housing and Local Government to review the existing list as expressed in the Plant and Machinery (Valuation for Rating) Order, 1927, was published on 30th January (H.M.S.O., 2s. 6d.). It includes a new list of all types of machinery and plant which the Committee considers should be liable to local rates on the principles established by the Rating and Valuation Act, 1925. This list was prepared in the light of modern developments and, if approved, will come into operation on 1st April. Before making the new order under the 1925 Act, the Minister will take into account any representations on the Report received in the Ministry by 28th February.

THE AGRICULTURE (POWER TAKE-OFF) REGULATIONS, 1957

Agricultural employers and workers are reminded that the second stage of the Agriculture (Power Take-off) Regulations, 1957 (S.I. 1957 No. 1386), came into operation on 1st February, 1959. From that date the power take-off shafts of new machines must be guarded as prescribed (machines already in use are not affected until next August). A free explanatory leaflet is obtainable from the Ministry of Agriculture, Fisheries and Food, Soho Square, London, W.1, or in Scotland from the Department of Agriculture for Scotland, Broomhouse Drive, Edinburgh, 11.

THE LAW SOCIETY HONOURS EXAMINATION, NOVEMBER, 1958

At the Examination for Honours of Candidates for Admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to Honorary Distinction:—

FIRST CLASS

(In order of merit)

(1) C. B. Powell-Smith; (2) B. Wolfson, LL.B. (Liverpool); (3) P. Beckman, B.A. (Oxon).

SECOND CLASS

(In alphabetical order)

J. P. Arnold, B.A., LL.B. (Cantab.); V. E. Barton; J. D. R. Bradbeer, B.A. (Cantab.); J. M. Cartwright; C. L. Corman, LL.B. (London); K. Cutler; V. Daly, M.A., B.C.L. (Oxon); J. M. Davies; P. R. H. Dixon, B.A., LL.B. (Cantab.); J. Duckworth; J. V. O. D. Dunstan; D. Edwards, LL.B. (Wales); E. H. Glickman, LL.B. (Manchester); C. P. Hargreaves, LL.B. (Liverpool); A. N. S. Jones, LL.B. (Leeds); P. B. Langford, B.A. (Oxon); G. W. Lowther, LL.B. (Durham); P. F. McCarthy, B.A. (Oxon); B. D. A. McCaully, B.A. (Oxon); M. Mendelsohn; R. T. Oerton; A. B. Quinn; A. J. Richards, B.A. (Oxon); J. A. Rowson; J. C. Sheppard, B.A. (Oxon); P. M. Smedley, LL.B. (London); B. J. Stanfield, LL.B. (London); J. A. Swindell; M. J. W. Tod, B.A. (Cantab.); B. W. Turner; G. C. P. Walker, LL.B. (Leeds); J. S. Walker-Arnott, LL.B. (London); K. J. Werring, LL.B. (Birmingham); T. J. M. Wickens; C. F. J. Wigginton.

THIRD CLASS

(In alphabetical order)

C. S. Barker, B.A. (Oxon); J. H. Birkett, LL.B. (Manchester); R. A. Blakemore, LL.B. (Birmingham); F. W. Brown, LL.B. (London); N. F. A. Buxton; J. K. H. Havard, B.A. (Oxon); H. P. Hillyer; A. H. Howe; A. B. V. Hughes; A. G. Hurton; D. B. T. Jones, M.A., LL.B. (Cantab.); R. A. Mackenzie-Freeman; I. D. McMichael, B.A. (Oxon); S. S. Mehlman; B. Norman, B.A., LL.B. (Cantab.); D. E. Platts; G. J. Ross, LL.B. (Birmingham); J. P. Saint; J. N. D. Spinks, LL.B. (London); R. T. C. Street; D. S. Thompson; M. T. Vincent; J. M. Walker, B.A. (Cantab.); G. H. Wattsford, LL.B. (Durham); R. C. W. Weston; J. H. Young, LL.B. (Durham); H. B. Zelin, LL.B. (London).

The Council of The Law Society have accordingly given Class Certificates and awarded the following prizes:—

Mr. Powell-Smith—The Clement's Inn Prize—Value £48; Mr. Wolfson—The Daniel Reardon Prize—Value £24; and Mr. Beckman—The Clifford's Inn Prize—Value £5 5s.

The Council have given Class Certificates to the Candidates in the Second and Third Classes.

One hundred and forty-three Candidates gave notice for Examination.

LOCAL GOVERNMENT IN LONDON

ROYAL COMMISSION TO TAKE EVIDENCE IN PUBLIC

The Royal Commission on Local Government in Greater London have decided that they will take oral evidence in public from local authorities, local authority associations and Government departments. Hearings will begin in early March. Further details will be announced later. The Commission propose to hear local authorities by counties in the following order: The Administrative County of London; Essex; Hertfordshire; Kent; Middlesex and Surrey. In each county the county district councils will be heard first—in alphabetical order—and then the county councils. At an appropriate stage the City of London and the county boroughs will also be heard. Government Departments will be heard after the local authorities and the local authority associations. The written memoranda of evidence from Government Departments is published by H.M. Stationery Office, price 10s.

Wills and Bequests

Mr. I. M. B. Mendus, solicitor, of Workington, left £22,112 net.

OBITUARY

SIR G. F. CARTER

Sir Gerald Francis Carter has died, aged 77. He was principal assistant solicitor in the office of H.M. Procurator General and Treasury Solicitor from 1936 to 1944.

MR. P. F. CORKHILL

Mr. Percy F. Corkhill, solicitor, of Liverpool, died on 24th January, aged 86. He was admitted in 1907, and had been the Lord Mayors' secretary since 1895. He was awarded the C.B.E. in 1920.

MR. P. C. A. SLADE

Mr. Percy Claude Avery Slade, solicitor, of Wallingford, has died recently, aged 78. He was admitted in 1905.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).